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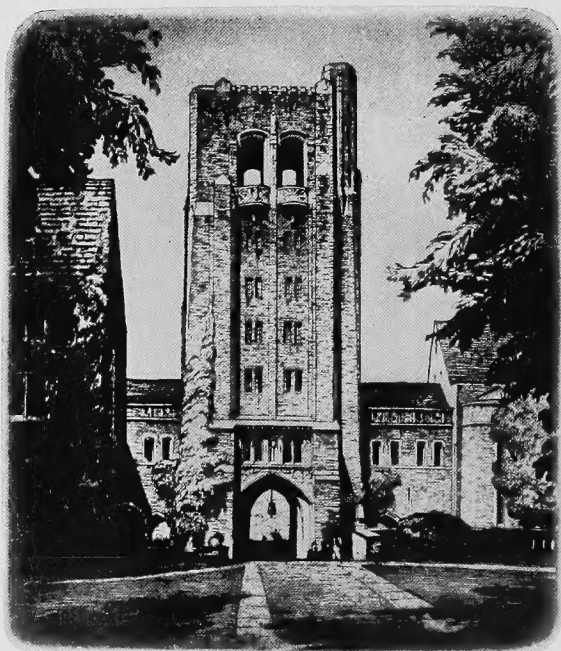
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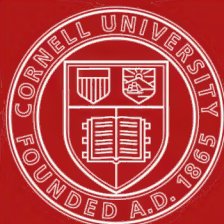


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U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

ROYAL MEEKER, Commissioner

BULLETIN OF THE UNITED STATES } . . . { WHOLE NUMBER 167
BUREAU OF LABOR STATISTICS }

MISCELLANEOUS SERIES: NO. 8

MINIMUM-WAGE LEGISLATION
IN THE UNITED STATES
AND FOREIGN COUNTRIES



APRIL, 1915

WASHINGTON
GOVERNMENT PRINTING OFFICE
1915

SERIES OF BULLETINS PUBLISHED BY THE BUREAU OF LABOR STATISTICS.

The publication of the Annual and Special Reports and of the bimonthly Bulletin has been discontinued, and since July, 1912, a Bulletin has been published at irregular intervals. Each number contains matter devoted to one of a series of general subjects. These Bulletins are numbered consecutively in each series and also carry a consecutive whole number, beginning with No. 101. A list of the series, together with the individual Bulletins falling under each, is given below. A list of the Reports and Bulletins of the Bureau issued prior to July 1, 1912, will be furnished on application.

Wholesale Prices.

- No. 1. Wholesale prices, 1890 to 1912. (Bul. No. 114.)
- No. 2. Wholesale prices, 1890 to 1913. (Bul. No. 149.)

Retail Prices and Cost of Living.

- No. 1. Retail prices, 1890 to 1911: Part I. (Bul. No. 105: Part I.)
Retail prices, 1890 to 1911: Part II—General tables. (Bul. No. 105: Part II.)
- No. 2. Retail prices, 1890 to June, 1912: Part I. (Bul. No. 106: Part I.)
Retail prices, 1890 to June, 1912: Part II—General tables. (Bul. No. 106: Part II.)
- No. 3. Retail prices, 1890 to August, 1912. (Bul. No. 108.)
- No. 4. Retail prices, 1890 to October, 1912. (Bul. No. 110.)
- No. 5. Retail prices, 1890 to December, 1912. (Bul. No. 113.)
- No. 6. Retail prices, 1890 to February, 1913. (Bul. No. 115.)
- No. 7. Sugar prices, from refiner to consumer. (Bul. No. 121.)
- No. 8. Retail prices, 1890 to April, 1913. (Bul. No. 125.)
- No. 9. Wheat and flour prices, from farmer to consumer. (Bul. No. 130.)
- No. 10. Retail prices, 1890 to June, 1913. (Bul. No. 132.)
- No. 11. Retail prices, 1890 to August, 1913. (Bul. No. 136.)
- No. 12. Retail prices, 1890 to October, 1913. (Bul. No. 138.)
- No. 13. Retail prices, 1890 to December, 1913. (Bul. No. 140.)
- No. 14. Retail prices, 1907 to December, 1914. (Bul. No. 156.)
- No. 15. Butter prices, from producer to consumer. (Bul. No. 164.)

Wages and Hours of Labor.

- No. 1. Wages and hours of labor in the cotton, woolen, and silk industries, 1890 to 1912. (Bul. No. 128.)
- No. 2. Wages and hours of labor in the lumber, millwork, and furniture industries, 1890 to 1912. (Bul. No. 129.)
- No. 3. Union scale of wages and hours of labor, 1907 to 1912. (Bul. No. 131.)
- No. 4. Wages and hours of labor in the boot and shoe and hosiery and knit goods industries, 1890 to 1912. (Bul. No. 134.)
- No. 5. Wages and hours of labor in the cigar and clothing industries, 1911 and 1912. (Bul. No. 135.)
- No. 6. Wages and hours of labor in the building and repairing of steam railroad cars. (Bul. No. 137.)
- No. 7. Union scale of wages and hours of labor, May 15, 1913. (Bul. No. 143.)
- No. 8. Wages and regularity of employment in the dress and waist industry of New York City. (Bul. No. 146.)
- No. 9. Wages and regularity of employment in the cloak, suit, and skirt industry. (Bul. No. 147.)
- No. 10. Wages and hours of labor in the cotton, woolen, and silk industries, 1907 to 1913. (Bul. No. 150.)
- No. 11. Wages and hours of labor in the iron and steel industry in the United States, 1907 to 1912. (Bul. No. 151.)
- No. 12. Wages and hours of labor in the lumber, millwork, and furniture industries, 1907 to 1913. (Bul. No. 153.)
- No. 13. Wages and hours of labor in the boot and shoe and hosiery and knit goods industries, 1907 to 1913. (Bul. No. 154.)
- No. 14. Wages and hours of labor in the clothing and cigar industries, 1911 to 1913. (Bul. No. 164.)
- No. 15. Wages and hours of labor in the building and repairing of steam railroad cars, 1890 to 1913. (Bul. No. 163.)

[See also third page of cover.

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BULLETIN OF THE U. S. BUREAU OF LABOR STATISTICS.

WHOLE NO. 167.

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APRIL, 1915.

MINIMUM-WAGE LEGISLATION IN THE UNITED STATES AND FOREIGN COUNTRIES.

BY CHAS. H. VERRILL.

INTRODUCTION AND SUMMARY.

The minimum-wage movement in this country, which resulted in the enactment of minimum-wage laws in nine States in 1912 and 1913, while perhaps appearing to be a sudden development, was in fact the result of considerable investigation in this country and of long investigation, agitation, and experiment in New Zealand, Australia, and Great Britain. In Great Britain, especially, investigations of sweated trades and studies of the remedies possible to correct the evil conditions found therein, and especially to deal with low wages, had extended over a period of more than 20 years. The experience with the legal minimum wage as a remedy had in New Zealand and Victoria extended over a period of more than 15 years.

The reason which has led to the enactment of minimum-wage laws has been much the same in most of the countries, namely, low wages. While investigations in the United States have rarely disclosed conditions comparable with those found in some of the sweated industries in Great Britain and in Australia, yet all of them have brought out the fact that in many industries a large proportion of the women were working at wages insufficient to meet the necessary cost of living if dependent upon their own earnings. The development of the movement for a legal minimum wage may be seen from the following list of the foreign and American States having such laws, with the dates of the first enactments.

Minimum-wage Laws of Various Countries, with Dates of First Enactment.

New Zealand: Industrial conciliation and arbitration act, August 31, 1894.

Victoria: Factories and shops act, July 28, 1896.

South Australia: Factories act, December 5, 1900.

New South Wales: Industrial arbitration act, December 10, 1901.

Western Australia: Conciliation and arbitration act, February 19, 1902.

Commonwealth of Australia: Commonwealth conciliation and arbitration act, December 15, 1904.

Queensland: Wages boards act, April 15, 1908.

Tasmania: Wages boards act, January 13, 1911.

Great Britain: Trade boards act, October 20, 1909; coal mines (minimum wage) act, March 29, 1912.

United States—

Massachusetts: June 4, 1912; March 21, 1913; May 19, 1913.

Oregon: February 17, 1913.

Utah: March 18, 1913.

Washington: March 24, 1913.

Nebraska: April 21, 1913.

Minnesota: April 26, 1913.

Colorado: May 14, 1913.

California: May 26, 1913.

Wisconsin: July 31, 1913.

The minimum-wage law, as it has been known in recent American discussion, and as it is usually understood in Great Britain, Australia, and New Zealand, does not refer to a law in which is fixed a single rate below which no worker may be employed, although such laws are in existence in most of the Australasian States. The minimum wage, as understood in this country and Great Britain, is a wage fixed by some agency created by law, after due investigation has been made. Two methods have grown up in Australia and New Zealand, one or the other of which has been followed in practically all of the States where minimum-wage legislation has been put in force.

In Victoria, since the enactment of the first law, July 28, 1896, minimum wages have been established by wages boards, made up of equal numbers of representatives of employers and employees, presided over by an impartial chairman, who has a deciding vote. These wages boards are set up for each trade or industry and are required to discuss conditions and to determine by agreement the minimum wages to be paid in the various processes and occupations in their own industry. These minimum rates, when fixed and published, are for the time being legally binding upon all employers in the industry within the area for which the board is appointed. This method was introduced in South Australia in 1900, in Queensland in 1908, in Tasmania in 1911, but some modification has been made in more recent legislation.

A second method of fixing the minimum wage has been followed in New Zealand since 1894. The compulsory arbitration law of New Zealand, adopted primarily for the prevention of strikes and lockouts, conferred upon the arbitration court the authority to fix the condi-

tions of employment, including the minimum wage to be paid, in the cases coming before it. This method was adopted by New South Wales in 1901, Western Australia in 1902, and the Commonwealth of Australia in 1904.

In the States which have the industrial arbitration system, industrial agreements of employers and employees under certain conditions may be registered and have the force of awards. They are enforceable against the parties and such other organizations and persons as signify their intention to be bound by agreement. In some of the States these industrial agreements have become very important. Thus, at the end of September, 1914, 89 such agreements were in force in New South Wales and 84 in Western Australia.

An important difference between the wages board and the compulsory arbitration method is that the wages board itself takes the initiative in determining wages and conditions of employment for the industry, without waiting for a dispute to arise, while under the compulsory arbitration method the court itself does not initiate proceedings, but waits until a dispute brings the question of wages or conditions before it for adjustment. Under the wages-board system each trade or industry has its own board, whereas an arbitration court ordinarily deals with all the industries within a district. Another important difference is in the fact that the wages boards consist of persons representing both employers and employees, with an impartial chairman, while the arbitration court usually consists of one member only, who may, however, be assisted by experts or assessors.

A recent tendency in Australia is to combine the most successful features of the two systems. Thus, Victoria since 1903 and South Australia since 1907 have had courts of industrial appeals, which may review the determinations of wages boards. Queensland since 1912 has had an industrial court to which appeals may be made. In Tasmania appeal from a wages-board determination may be made to the supreme court. On the other hand, New South Wales introduced in 1908 wages boards (or "industrial boards") in connection with its system of compulsory arbitration, and New Zealand in the same year added conciliation councils, whose functions and methods are somewhat similar to those of the wages boards in Australia.

In addition to the laws providing for the fixing of a minimum wage by wages boards or courts of arbitration, the laws specifying a wage below which no worker may be employed, which have already been referred to, are important as limiting the wages for children or apprentices. A special reason for their enactment was to prevent the employment of children or apprentices without any wage or at a premium, as was often done under the pretense of teaching the trade. All of the Australasian States except Western Australia now

have such laws. In New Zealand the law specifies a minimum of 5s. (\$1.22) a week for the first year, 8s. (\$1.95) a week for the second year, to be increased 3s. (73 cents) a week for each additional year of employment in the same trade until a wage of 20s. (\$4.87) is reached. No premium may be paid, nor any deduction made from the wages of any boy or woman under 18 except for time lost through the worker's fault or illness, or on account of the temporary closing of the factory for cleaning or repairing of machinery. Under the corresponding laws the minimum in Victoria is 2s. 6d. (60.8 cents) a week; in South Australia, New South Wales, and Tasmania, 4s. (97.3 cents) a week; and in Queensland, 5s. (\$1.22) a week. In Queensland and Tasmania the law provides for an increase in wages, according to years of service, somewhat as in New Zealand.

The minimum-wage laws, both in New Zealand and in Australia, met with much criticism and opposition in the earlier years. In spite of this fact, however, they have been extended from year to year, until they now apply to practically all industries in all the States. Thus in Victoria the act of 1896, which at first applied to 6 sweated trades only, has been renewed by the approval of the legislature five successive times. The gradual application to the factories and industries in Victoria may be seen by the addition by action of Parliament in 1900 of 21 trades, in 1901 of 11 trades, in 1903 of 1 trade, in 1906 of 11 trades, in 1907 of 2 trades, in 1908 of 4 trades, in 1909 of 16 trades, in 1910 of 20 trades, in 1911 of 12 trades, in 1912 of 19 trades, and in 1913 of 2 trades. In addition by action of the governor in council under the general authority of the law 8 boards were appointed in 1911 and 1 in 1912. The number of special boards existing or authorized at the end of 1913 was 134, affecting approximately 150,000 employees. The extent of the system in the several States, as shown by available reports on April 30, 1914, may be seen from the following statement. The industrial agreements referred to have the force of awards:

New South Wales:

Industrial boards, 208.

Number of awards in force, 260.

Industrial agreements in force, 71.

Membership of unions, about 200,000.

Victoria:

Wages boards, 131.

Number of determinations in force, 129.

Persons affected, 150,000.

Queensland:

Industrial boards, 81.

Number of awards in force, 76.

Persons affected, over 90,000.¹

¹ At the end of June, 1914, the number of persons affected by industrial-board awards in Queensland was reported as 90,000 under 92 awards.

South Australia:

- Wages boards, 51.
- Number of determinations in force, 54.
- Persons affected, 25,000.

Western Australia:

- Number of awards in force, 18; number of awards pending, 19.
- Number of industrial agreements in force, 93.
- Membership of registered industrial unions, 30,000.

Tasmania:

- Wages boards, 21.
- Number of determinations in force, 19.

Commonwealth of Australia:

- Number of awards in force, 17.
- Number of industrial agreements in force, 233.

New Zealand:

- Number of industrial unions, December 31, 1913, 399.
- Membership of industrial unions, 72,000.
- Number of industrial agreements and awards in force March 31, 1912, 373.

During the period since the enactment of these laws, the industries of the various States have maintained a steady growth and it is reported that the systems of fixing minimum wages have not been found a check upon this growth.

Such reports as are available from the Australasian States do not disclose any tendency, after the many years during which the laws have been in effect, to make the minimum also the maximum rate. A New Zealand report discussing this question in 1910 showed that in trades where minimum rates had been fixed by the arbitration court, employing some 7,400 workers, 62 per cent were receiving in excess of the minimum established by the court. The investigation covered the four principal cities of the colony. In Auckland 63 per cent received in excess of the minimum; in Wellington, 64 per cent; in Christchurch, 63 per cent, and in Dunedin, 56.5 per cent.¹

In the Australasian States the wage rates fixed by the wages boards and industrial courts are not for unskilled and low-grade workers only, but for all occupations, skilled as well as unskilled. The "living wage" is accepted as the basis for laborers, but above this many rates are fixed, for the several occupations coming under the jurisdiction of a board, according to skill. Thus, in a typical Victorian determination of the engineering board, while a rate of 48s. (\$11.68) for a 48-hour week is fixed for laborers, various higher minimum rates are fixed for the other occupations up to 66s. (\$16.06) for blacksmiths, fitters, turners, etc., and 72s. (\$17.52) for pattern makers.²

For apprentices and learners special minimum rates, below the cost of living minimum for adults, are fixed according to age, the rates usually being increased at regular intervals to the end of a fixed period, when the scale for adults comes into effect. An im-

¹ See page 171.

² See also page 124 et seq.

portant duty of the Australasian determinations and awards is the fixing of the proportion of apprentices and learners.

Great Britain in introducing minimum-wage legislation took the Victorian system as a model after an investigation by a commissioner in 1908. The first British legislation was the trade boards act of 1909, enacted October 20, 1909, and in effect January 1, 1910. The law as enacted applied to four trades: Chain making by hand, paper-box making, lace finishing, and wholesale tailoring. These trades were estimated to employ about 250,000 persons, more than two-thirds of whom were women. The avowed purpose of the act was to deal with sweated industries, and the four first chosen were chosen because of the low wages which they were known to pay. On August 15, 1913, by the trade boards provisional orders confirmation act of 1913, the law was extended practically without opposition to include four other industries: Sugar confectionery and food preserving, shirt making, hollow ware, and cotton and linen embroidery. These industries have been estimated to employ about 150,000 persons.

Under this act one or more wages or trade boards may be established by the Board of Trade for each of the specified industries. The boards must consist of equal numbers of persons representing employers and employees and a smaller number of appointed members unconnected with the trade. The number of appointed members must be less than half the total number of representative members. One of the members is named by the Board of Trade as chairman. The trade boards are authorized to fix minimum time rates or minimum piece rates, and may fix special rates for any particular class of work. The rates may differ according to district or according to persons. The boards have power to issue permits to slow, aged, or infirm workers to be employed for less than the minimum rate.

Before fixing any minimum rate the trade board must give notice of the rate which it proposes to fix and consider any objections which may be filed with it within three months. At the conclusion of the three months' period the rate may be fixed by the trade board and then comes into operation to a limited extent. Six months later the Board of Trade must issue an order making the rate obligatory upon all employers, unless the Board are of the opinion that the circumstances are such as to make it premature or otherwise undesirable.

For the extension of the act to other trades a provisional order of the Board of Trade is necessary, which must have the approval of Parliament.

The methods of the British trade boards in fixing minimum rates are similar to those followed by the wages boards in Australia. One minimum rate is usually established for workers above a certain age engaged in a process or occupation, while for younger workers a minimum rate considerably lower is established, increasing according to duration of employment. It is claimed that the result of fixing a

graded scale of pay, rising year by year, for apprentices and learners is that employers are induced in their own interest to see that proper instruction is given in order to improve the value of the services of the employee.

The following statement shows in part the minimum rates fixed for the ready-made and wholesale tailoring trade in Great Britain:

	Per hour.
Female workers other than home workers.....	3½d. (6.6 cents).
Female home workers.....	3½d. (6.6 cents).
Female learners, commencing at 14 and under 15 years of age:	
	Per week of 50 hours.
First 6 months.....	3s. (73 cents).
Second 6 months.....	4s. 6d. (\$1.10).
Third 6 months.....	6s. (\$1.46).
Fourth 6 months.....	7s. 3d. (\$1.76).
Fifth 6 months.....	8s. 4d. (\$2.03).
Sixth 6 months.....	9s. 5d. (\$2.29).
Seventh 6 months.....	11s. 5d. (\$2.78).
Eighth 6 months.....	12s. 6d. (\$3.04).

In the trade in question different rates are provided for learners commencing at 15 and under 16 years of age, at 16 and under 21 years of age, and at 21 years of age and over. This grading of minimum rates according to age and experience is a characteristic feature of the determinations of the British and Australian wages boards. It will be noticed that the number of grades and length of the periods fixed for learners and apprentices are greatly in excess of those thus far fixed by American commissions.

An important industry to which the legal-minimum-wage principle has been applied in Great Britain is coal mining, the coal mines (minimum wage) act of 1912 having been enacted March 29, 1912, providing for the establishment of boards for fixing minimum rates for all underground workers in coal mines, numbering over 800,000, the greatest body of workers anywhere under the protection of a minimum-wage act. The act expires by limitation three years after its approval unless extended by Parliament. This law was enacted as a compromise in settlement of an important strike, the workers at the time having made a strong demand for the introduction of a minimum wage into the law itself, a demand which was not granted by Parliament. The measure as passed provided for the establishment of joint district boards, consisting of representatives of employers and employees, with an independent chairman appointed by them. The boards may fix wage rates, rules, and conditions of work. The country, for the purposes of the law, is divided into 22 districts, each of which has a wages board. The application of the legal minimum wage to the coal-mining industry in Great Britain is especially significant, because of the fact that the employees are very largely adult males and very strongly organized.

Statistics are not available to show precisely the gains which have resulted to the workers from the operation of these laws, but such information as is available shows very considerable gains in wage rates in particular cases, especially to the lowest-grade workers. The gains also, it has been stated, extend to workers formerly earning above the minimum fixed.¹

All of the foreign minimum-wage laws above referred to are applicable to men, as well as to women and children, in this respect differing from the American laws, all of which have one principle in common in that they apply only to women and minors.

Minimum-wage legislation in the United States began with the enactment of the Massachusetts law of June 4, 1912, which, however, did not come into effect until July 1, 1913. Legislation in Massachusetts was followed by similar legislation in eight other States during 1912 and 1913. As regards the scope of the laws, in California, Oregon, and Washington the commissions have authority to fix the conditions of labor, as well as minimum-wage rates, and in California and Oregon to fix maximum hours, but in California the hours fixed may not be in excess of those fixed by specific statute. In Wisconsin the industrial commission under an earlier enactment may fix maximum hours and conditions of labor. In all the other States except Utah the powers granted under these laws are limited to fixing minimum wages. In Utah only the minimum-wage rates are fixed in the act, namely:

For minors under 18, not less than 75 cents a day.

For adult learners and apprentices, not less than 90 cents a day, with the learning or apprenticeship period limited to one year.

For experienced adults, not less than \$1.25 per day.

The basis for determining the minimum wage is in all the other American laws the necessary cost of living, but in Colorado, Massachusetts, and Nebraska consideration must be given also to the financial condition of the business and the probable affect thereon of any increase in the minimum wage. By exception a lower wage may be paid to those who are physically defective. For learners and apprentices a substandard minimum is provided for in some but not in all of the laws.

The American acts do not contain any provision specifically authorizing a commission to limit the number or proportion of apprentices. However, under its power to limit the number of apprentices to those holding licenses, the Washington commission has undertaken to limit the number of apprentices. The Wisconsin act contains a similar provision.

The administration of the laws is, except in the case of Utah, in the hands of a commission, either appointed for the purpose or having general functions in regard to the administration of labor laws.

¹ See page 129 et seq.

In Utah the administration of the law is in the hands of the commissioner of immigration, labor, and statistics. The commissioners are in all cases appointed by the governor.

Preliminary to the fixing of minimum-wage rates, investigation by the commission, either upon its own initiative or upon complaint, is required, the commissioners having authority to subpoena witnesses, administer oaths, and examine books. The work of determining the proper minimum wage is in all cases, except Colorado and Utah, in the hands of a subordinate wage board, these boards, however, only serving in an advisory capacity to the administrative commission, which may refer back all or any part of the recommendations for further investigation and consideration or may appoint a new wage board.

The wage boards consist of equal numbers of representatives of employers and employees and one or more representatives of the administrative commission or of the public. The boards, upon being established, consider the results of the preliminary investigations and may make further investigations, endeavoring in conference to agree upon the minimum wage to be recommended. When the report of the wage boards has been accepted by the administrative commissions, public hearings must be held, with due notice. If, after the hearings, no change is considered necessary in the recommendations, they are published as orders, which become effective after 30 days in Minnesota and Wisconsin and after 60 days in California, Colorado, Oregon, and Washington. In Massachusetts the commission enters a decree of its findings and at the same time notes thereon the names of employers who fail or refuse to accept the minimum wage. These names may be published by the commission when advisable. In Nebraska the procedure is as in Massachusetts except that the names of employers paying less than the minimum must be published within 30 days.

In all the States except Minnesota special provision is made for court review. In Oregon and Washington only questions of law may be referred to the court. In California, in addition, the court may set aside a determination if the commission act without or in excess of its powers or if the determination was procured by fraud. In California and Wisconsin the determination may be set aside if unreasonable or unlawful; in Massachusetts, if compliance would prevent a reasonable profit; in Nebraska, if likely to endanger the prosperity of the business.

In all the States except Massachusetts and Nebraska a penalty of fine or imprisonment, or in some cases of both, is provided for paying less than the minimum wage fixed or for failure to comply with the other conditions of the determination. In Massachusetts and Nebraska the only power of enforcement given to the commission is such as is contained in the authority to publish the names of employers paying less than the minimum wage fixed.

The preliminary work necessary to fixing minimum-wage rates is considerable and only a few of the States have yet reached this point in the administration of their minimum-wage laws. In Utah, where the rate was fixed in the law, it came into effect with the law without formality. In Minnesota wage orders were issued in October, 1914, fixing wages, but an injunction issued the day before the orders were to become effective suspended their enforcement, and the matter is still awaiting the decision of the State supreme court. In some of the other States action has been delayed pending the decision of the United States Supreme Court upon the constitutionality of the Oregon act.¹ The wage determinations thus far available, and the dates when effective, are as follows. It will be observed that the variations for age and experience in the rates fixed in these determinations are much less numerous than in those of the British and Australian wages boards:

OREGON.

October 4, 1913, in manufacturing or mercantile establishments, millinery, dress-making or hairdressing shops, laundries, hotels, restaurants, telephone or telegraph establishments or offices in the State, for girls between 16 and 18 years, a minimum wage of \$1 a day.

November 10, 1913, in manufacturing establishments in Portland, for experienced adult women, a minimum weekly rate of \$8.64.

November 23, 1913, in mercantile establishments in Portland, for experienced adult women, a minimum weekly rate of \$9.25.

February 2, 1914, in offices in Portland, for experienced adult women, a minimum rate of \$40 per month.

February 7, 1914, in any industry in the State, experienced adult women, a minimum weekly rate of \$8.25.

February 7, 1914, for inexperienced adult women, a minimum weekly rate of \$6. Such workers shall be considered inexperienced not more than one year.

August 31, 1914, in millinery and dressmaking trades, for women and girls with no previous experience, a preapprenticeship period of 30 days' employment to test fitness for the trade will be allowed at a weekly rate of less than \$6.

WASHINGTON.

June 27, 1914, in mercantile establishments, for any female over 18, a minimum weekly rate of \$10.

June 27, 1914, in mercantile establishments, for any person under 18, a minimum weekly rate of \$6.

August 1, 1914, in factories, for any female over 18, a minimum weekly rate of \$8.90.

August 1, 1914, in factories, for any person under 18, a minimum weekly rate of \$6.

August 24, 1914, in laundries and dye works, for any female over 18, a minimum weekly rate of \$9.

August 24, 1914, in laundries and dye works, for any person under 18, a minimum weekly rate of \$6.

September 7, 1914, in any establishment in connection with the operation of a telephone or telegraph line, for any female over 18, a minimum weekly rate of \$9.

October 7, 1914, in any establishment in connection with the operation of a telephone or telegraph line, for any person under 18, a minimum weekly rate of \$6 (this order does not apply to messengers in third-class cities or towns who are not continuously employed and who are paid by the piece).

¹ See page 66.

February 20, 1915, as stenographer, bookkeeper, typist, billing clerk, filing clerk, cashier, checker, invoice clerk, comptometer operator, or any clerical work of any kind, for any female over 18, a minimum weekly rate of \$10.

February 20, 1915, as stenographer, bookkeeper, typist, billing clerk, filing clerk, cashier, checker, invoice clerk, comptometer operator, or any clerical work of any kind, for any person between 16 and 18, a minimum weekly rate of \$7.50; for any person under 16, a minimum weekly rate of \$6.

Also the following rules in regard to apprentices:

June 27, 1914, in mercantile establishments, for apprentices—

First 6 months, a minimum weekly rate of \$6.

Second 6 months, a minimum weekly rate of \$7.50.

And not more than 17 per cent of the total number of adult female employees shall be apprentices, and not more than 50 per cent of apprentices shall receive a weekly wage of less than \$7.50.

Millinery and dressmaking, one year's apprenticeship—

17 weeks at \$3 a week.

17 weeks at \$5 a week.

18 weeks at \$7.50 a week.

Manicuring and hairdressing, one year's apprenticeship, in 4 periods of 3 months each—

First period, \$1.50 a week.

Second period, \$4 a week.

Third period, \$6 a week.

Fourth period, \$8 a week.

Telephone, 9 months' apprenticeship—

3 months at \$6 a week.

2 months at \$6.60 a week.

2 months at \$7.20 a week.

2 months at \$7.80 a week.

In the smaller exchanges—

4 months at \$6 a week.

5 months at \$7.50 a week.

Laundry, 6 months' apprenticeship—

3 months at \$6 a week.

3 months at \$7.50 a week.

Factories, 6 months to one year's apprenticeship, with two or more periods, beginning at \$6 a week.

Office employment, 6 months' apprenticeship, at \$7.50 a week.

MASSACHUSETTS.

Brush industry, August 15, 1914:

For experienced female employees, a minimum wage of 15½ cents an hour.

For learners and apprentices, 65 per cent of the above minimum.

Period of apprenticeship shall not be more than 1 year.

These findings shall apply also to all minors.

The material available for arriving at a judgment of the effect of the minimum-wage laws in the various States is as yet very limited. Such laws must be regarded as still in the experimental stage so far as the United States is concerned. A study of their operations over a considerable period of time and under a variety of conditions will be necessary before any definite conclusion as to their ultimate effect can be reached. In Utah, as the wage scale came into force with the law itself on March 13, 1913, there is a considerable period

of experience to indicate the effect of the law. In the other States where wage rates have come into force, the longest experience is found in Oregon, where the first determination was October 4, 1913. In Washington the first determination dates back only to June 27, 1914, and in Massachusetts only to August 15, 1914. In the last-named State the wage scale is applicable to only one industry, and that one employing only a small number of persons.

In Utah an informal report by the official charged with the administration of the act, after an experience of slightly over a year, stated that (1) the law had been instrumental in raising the wages of a number of women and girls; (2) it had not increased the pay roll, in establishments employing any considerable number of women, over 5 per cent; (3) it had not caused the minimum to become very nearly the maximum wage. A much larger number of employees are drawing a wage in excess of the highest minimum than are paid the legal wage itself. (4) Most employers admit that they have obtained increased efficiency since the law came into effect. (5) The law has tended to equalize the cost of production or of selling among the various manufacturers and merchants.¹

In Oregon the only official report available furnishes no information in regard to the effect of the wage rates which have been put into force. With the purpose of securing full and accurate information in regard to the effect upon the employees and the industry of a typical minimum-wage law, an intensive study of the Oregon act, as the minimum act longest in operation, was undertaken by the Bureau of Labor Statistics in cooperation with the Commission on Industrial Relations. The results of this study will be published as a bulletin of this Bureau within a few months.

In Washington a survey by the State commission of the three leading industries in which the minimum wage was first established, mercantile establishments, laundries, and telephone exchanges, showed that while 60 per cent (50 per cent in the stores) of the women employed were receiving less than the minimum wage prior to the application of the law, the wages of practically all of these workers had been raised to the minimum without serious opposition and without injury to the industries. No leveling down of wages was found, but, on the contrary, a larger number than formerly were receiving in excess of the wage fixed as the established minimum. The women workers have been neither dismissed nor displaced by cheaper employees, and the number replaced by apprentices or minors is reported to be so small as to be a negligible factor.²

In Massachusetts no determination has been in effect for longer than six months and no official information is available to show the effect of the new scale of pay upon either the workers or the industry.

¹ See page 75.

² See page 78 et seq.

MINIMUM-WAGE LEGISLATION IN THE UNITED STATES.

REASONS WHICH HAVE BROUGHT ABOUT MINIMUM-WAGE LEGISLATION IN THE UNITED STATES.

In studying minimum-wage legislation in the United States it may be proper to consider the reasons which have usually been put forward in the States where minimum-wage legislation has been enacted for the passage of the existing laws. These may be summarized briefly as—

1. In many industries a large proportion of the wage earners are women who are dependent upon their own earnings and in many cases are also the principal support of others.

2. A considerable proportion of these women, and, in fact, of all women wage earners, are paid wages inadequate to supply a reasonable standard of living.

3. In a considerable number of these industries, however low the wages paid in some establishments may be, other establishments are to be found in the same localities paying a living wage and successfully competing with those of the lower-wage standard.

While there have been within a few years many local investigations of the wages and conditions of women wage earners, the Bureau of Labor Report on Condition of Woman and Child Wage Earners in the United States has been most often cited as showing conditions throughout a wide area. Thus this report showed¹ that in a group of 1,698 women employed in department and other retail stores in seven of the principal cities, 26.1 per cent were without homes and entirely dependent upon their own earnings, and that of those living at home 68.5 per cent turned in all of their earnings toward the family support. In a similar group of 5,014 women employed in mills and factories in the same cities, 17.5 per cent were found to be without homes and dependent upon their own earnings, and among those living at home 77.2 per cent turned in all their earnings to the family. In another part of the woman and child labor investigation it was found that in a group of some 4,800 families with girls 16 years of age and over at work in the cotton, men's ready-made clothing, glass, and silk industries, these girls contributed nearly all their earnings to the family support, the average per cent of total

¹ Vol. V., pp. 15 and 19 to 21.

earnings contributed ranging from 86 per cent in the glass industry to 96 per cent in the silk industry and 97 in the cotton industry in New England; or, measured in another way, their contributions constituted of the total family income 27 per cent in the glass industry, 40 per cent in the clothing industry, 35 per cent in the silk industry, and 43 per cent in the New England cotton industry.¹

In the group of women employed in department and other retail stores already referred to, the average weekly earnings of 30.8 per cent were under \$6 and of 66.2 per cent under \$8. A study of the pay rolls of department and other retail stores in New York, Chicago, and Philadelphia, including 36,000 female employees, showed that the weekly rates of pay of 26.4 per cent fell below \$6 and of 57.7 per cent below \$8. In the group of women employed in mills and factories already referred to, the average weekly earnings of 40.1 per cent fell below \$6 and of 74.3 per cent below \$8.²

Similar figures are available from the same report covering the four great industries, cotton, men's clothing, glass, and silk. The percentages of women 16 years of age and over whose wages in a representative week fell below \$6 and \$8 were found to be as follows:

PER CENT OF WOMEN 16 YEARS OF AGE AND OVER EARNING UNDER \$6 AND UNDER \$8 IN A REPRESENTATIVE WEEK.

Industry.	Total number.	Per cent earning—	
		Under \$6.	Under \$8.
Cotton:			
New England.....	13,744	38.0	67.5
Southern.....	12,654	68.0	90.9
Men's ready-made clothing.....	10,149	49.0	73.1
Glass.....	2,774	64.0	91.5
Silk.....	8,596	45.4	71.1

In another section of the woman and child labor investigation, where the wages of over 38,000 women 18 years of age and over were secured, the following percentages were found to be receiving less than \$6 and less than \$8 in a representative week.

¹ Vol. I, pp. 433, 436; Vol. II, pp. 365, 368; Vol. III, pp. 525, 527; Vol. IV, pp. 259, 261.

² Vol. V, pp. 41, 45, and 46.

PER CENT OF FEMALE EMPLOYEES 18 YEARS OF AGE AND OVER EARNING LESS THAN \$6 AND LESS THAN \$8 IN A REPRESENTATIVE WEEK, BY INDUSTRIES.

[Source: Report on Condition of Woman and Child Wage Earners in the United States, Vol. XVIII, p. 23.]

Industry.	Number.	Per cent earning—	
		Under \$6.	Under \$8.
Canning and preserving, fruits and vegetables.....	449	59.2	93.5
Canning and preserving, oysters.....	155	99.4	100.0
Cans and boxes, tin.....	225	50.2	79.5
Cigar boxes.....	335	61.8	84.5
Cigarettes.....	1,071	33.1	75.4
Cigars.....	5,994	39.3	71.3
Clocks and watches.....	696	33.5	72.3
Confectionery.....	1,948	55.6	81.3
Core making.....	307	22.1	61.9
Corsets.....	2,789	29.7	58.9
Crackers and biscuits.....	1,273	54.0	82.0
Hardware, etc.....	803	57.9	88.2
Hosiery and knit goods.....	7,251	31.7	64.0
Jewelry.....	129	31.8	67.4
Needles and pins.....	427	27.2	61.6
Nuts, bolts, and screws.....	433	61.7	92.1
Paper boxes.....	2,213	40.1	74.5
Pottery.....	503	45.5	65.8
Rubber and elastic goods.....	233	28.8	56.7
Shirts, overalls, etc.....	2,371	55.5	89.9
Stamped and enameled ware.....	992	45.0	72.7
Tobacco and snuff.....	3,670	55.6	79.9
Woolen and worsted goods.....	3,915	29.7	58.9
Total.....	38,182	41.1	72.7

The wide variation in the wages of women in unskilled occupations in the same industry is illustrated in the following table:

COMPARATIVE AVERAGE WAGES OF WOMEN IN 4 SELECTED OCCUPATIONS IN 13 SELECTED ESTABLISHMENTS IN THE GLASS INDUSTRY.

[Source: Report on Condition of Woman and Child Wage Earners in the United States, Vol. III, Glass Industry, p. 408.]

State.	Total. ¹			Selecting.			Wrapping.			Washing.			Grinding (hand).		
	Estab-lishment num-ber.	Num-ber of per-sons.	Aver-age wage per hour.	Estab-lishment num-ber.	Num-ber of per-sons.	Aver-age wage per hour.	Estab-lishment num-ber.	Num-ber of per-sons.	Aver-age wage per hour.	Estab-lishment num-ber.	Num-ber of per-sons.	Aver-age wage per hour.	Estab-lishment num-ber.	Num-ber of per-sons.	Aver-age wage per hour.
Pa.....	1	26	Cts. 5.9	1	16	Cts. 5.7	2	8	Cts. 5.7	1	10	Cts. 5.2	3	6	Cts. 6.2
Ohio.....	2	16	6.3	5	6	7.6	4	10	6.4	2	6	5.4	5	3	6.7
Pa.....	3	28	6.7	4	9	7.7	3	6	6.6	3	6	6.0	7	27	7.9
W. Va..	4	24	6.9	6	12	7.7	5	9	7.1	4	5	6.5	10	15	9.7
Pa.....	5	18	7.2	3	7	8.0	10	4	7.2	6	3	7.3	11	2	11.6
Ohio.....	6	23	8.1	6	20	8.2	7	24	7.5	12	6	7.5	8	15	12.4
Pa.....	7	79	8.1	8	45	8.4	8	19	7.7	7	6	7.9	9	4	14.3
Ohio.....	8	79	9.0	2	4	8.7	11	4	8.7	11	3	9.4	12	4	15.0
Do.....	9	34	9.3	7	22	9.0	9	6	8.9	9	12	9.6	5	.....	.....
Do.....	10	28	9.5	12	2	9.3	13	3	12.2	13	3	10.0	2	.....	.....
W. Va..	11	12	9.7	11	3	10.0	12	6	12.9	5	.....	.....	13	.....	.....
Ohio.....	12	18	11.2	10	9	10.0	6	.....	.....	10	.....	.....	4	.....	.....
Do.....	13	29	11.9	13	23	12.1	1	.....	.....	8	.....	.....	1	.....	.....

¹ In the total division the establishments are given consecutive numbers, these numbers being attached to the same establishments in each of the occupational divisions.

As these four occupations are all of a relatively unskilled character, it might fairly be supposed that there would be no great variation in the rate of wages, yet the table shows that for three of them the

average wage paid by the establishments at one extreme is at least double that paid by the establishment at the other extreme, while in the fourth occupation, washing, the variation is little short of 100 per cent. In grinding the variation is particularly great, the difference between 6.2 cents an hour and 15 cents an hour being, on a 58 hour per week basis, the difference between \$3.60 and \$8.70 a week.

The report of the Massachusetts Commission on Minimum Wage Boards disclosed similar variations in rates of pay in the same industry and in the same locality.¹ In England also investigations have shown extraordinary variations in women's wages. In some cases one worker will be getting twice as much for doing a certain piece of work as the woman who works next door. Especially striking instances of this fact have been pointed out in home work, but such examples are not limited to home workers but exist in factories and workshops as well. A firm in Whitechapel has been referred to which pays its tea packers 16s. (\$3.89) a week, while another firm in the same neighborhood pays 7s. 6d. (\$1.82) for the same work. One firm of cocoa manufacturers pays 1s. 3d. (30.4 cents) for the filling of 1,000 bags. Another close at hand pays only 8d. (16.2 cents).²

"As showing that at present no standard of payments exists in many women's trades, Miss Macarthur, secretary of the Women's Trade Union League, giving evidence before the select committee of the House of Commons, mentioned the case of two cartridge workers who left one factory in the Edmonton district for another newly opened in the district. The one girl is able to earn now about half what she earned at the Edmonton factory, and the other girl in another department is earning double what she earned at Edmonton. So that would show that in one department that firm is paying nearly 100 per cent more, and in another department 40 or 50 per cent less, than the other firm."²

In Massachusetts a commission on minimum-wage boards was appointed in 1911, the object of which as stated in the law was, "To report on the advisability of establishing a board or boards to which shall be referred inquiries as to the need and feasibility of fixing minimum rates of wages for women and minors in any industry." The commission, it was provided, should consist "of five persons, citizens of the Commonwealth, of whom at least one shall be a woman, one shall be a representative of labor, and one shall be a representative of employers."

The commission, after extensive investigations, submitted its report, recommending the enactment of a law providing for minimum-wage boards, in January, 1912.

¹ Pages 58, 117, and 160.

² The case for wages boards. By J. J. Mallon. (In *Première conférence internationale des ligues sociales d'acheteurs*, Genève, 24-26 septembre, 1908.) pp. 429-449.

The scope of the investigation of the Massachusetts commission is indicated by its statement in its report that: "To obtain an accurate view of the condition of labor so far as the women and minors are concerned, it is especially of service to ascertain, if possible, not only the wage schedules, but the actual weekly and annual earnings, the variation of these earnings with age and experience, the irregularity of employment due both to industrial conditions and to the physical exhaustion and ill health of the employees, the economic status of the workers in so far as they are aided by other members of a family group, or by charity, or are themselves called on to support others."

The commission collected wage schedules from 6,900 persons, and a certain amount of personal and domestic data from 4,672 persons. Employees in 91 establishments in 18 localities were investigated. The commission also made use of the material relating to female cotton operatives included in the Federal Bureau of Labor Report on Condition of Woman and Child Wage Earners in the United States. "Altogether, information, more or less detailed but all of a thoroughly reliable character, being based upon pay rolls and first-hand inquiries by trained investigators, was gathered covering 15,278 female wage earners engaged in four different occupations in the Commonwealth."

The number of employees included in the investigation whose wages were ascertained is shown in the following table:

NUMBER OF FEMALE WORKERS UNDER 18 YEARS OF AGE AND 18 YEARS OF AGE AND OVER IN THE INDUSTRIES INVESTIGATED.

	Confection- ery.	Stores.	Laundries.	Cotton.	Total.
Under 18 years of age.....	301	467	130	1,088	1,986
18 years of age and over	1,218	2,861	847	6,933	11,859
Total.....	1,519	3,328	977	8,021	13,845

The average weekly earnings of the employees included in the investigation in the various industries covered are shown in the following table. The earnings are expressed in percentages of workers receiving under a specified amount per week.

PER CENT OF FEMALE EMPLOYEES 18 YEARS OF AGE AND OVER INVESTIGATED RECEIVING WEEKLY WAGES UNDER SPECIFIED AMOUNTS.

	Per cent of employees receiving weekly wage—				
	Under \$5.	Under \$6.	Under \$7.	Under \$8.	\$8 and over.
Candy factories.....	41.0	65.2	82.3	93.1	6.9
Retail stores.....	10.2	29.5	47.9	60.4	39.6
Laundries.....	16.1	40.7	60.1	75.1	24.9
Cotton.....	23.0	37.9	53.0	66.8	33.2
Total.....	22.2	38.9	55.3	68.6	31.4

By the above figures it is seen that 41 per cent of the candy workers, 10.2 per cent of the saleswomen, 16.1 per cent of the laundry workers, and 23 per cent of the cotton workers earn less than \$5 a week, and that, respectively, 65.2 per cent, 29.5 per cent, 40.7 per cent, and 37.9 per cent of them earn less than \$6 a week. In these four industries, therefore, we find low wage rates for a very considerable number of persons.

The question how far the wages of the above four industries may be taken as representative of conditions broadly prevalent is answered in part by the figures supplied by the [Massachusetts] bureau of statistics.

The following table presents this information in the form of percentages of workers earning specified amounts per week:

PER CENT OF FEMALE EMPLOYEES IN ALL MANUFACTURING INDUSTRIES RECEIVING WEEKLY WAGES UNDER SPECIFIED AMOUNTS.

	Per cent of employees receiving weekly wage—				
	Under \$6.	Under \$7.	Under \$8.	\$8 and over.	Total.
21 years and over.....	17.7	33.8	50.6	49.4	100.0
18 years to 21 years ¹	24.2	47.7	65.8	34.2	100.0
Total 18 years and over ¹	19.0	36.6	53.7	46.3	100.0

¹ Estimated.

Examination of the findings of our own investigators shows that the lowest range of wages is less uniformly distributed within an industry than the statement of an average would suggest. For instance, in the candy industry, with its 41 per cent of adult women receiving less than \$5 a week, a comparison of wage rates in 11 different establishments shows that the lowest wages are confined to 4 factories, in 1 of which, indeed, 53.3 per cent of the employees received less than \$5, while the other 7 factories paid not one single employee of 18 or over so low a wage. The difference between these factories in the kind and the grade of their product can not account for the differences in the wage scale, as both the higher and the lower wage scale prevailed in the factories manufacturing the cheaper line of confectionery.

Similar differences between different establishments were found in the stores and the laundries. In the stores, indeed, the large and presumably prosperous establishments of Boston in many cases paid a lower wage than was paid in some of the small suburban establishments, and lower wages than were paid in Brockton or Springfield. Doubtless similar inequalities between different establishments would be found to prevail in other industries. In so far as this is the case, it is evidence that the industry will bear a higher rate of compensation than some employers pay. These latter, whether because of inefficient management or because they are making unusual profits, are doing business at the expense of their employees.

These inequalities of wages in the same industry are evidence of the fact to which some of the more thoughtful employers testified—that the rate of wages depends to a large degree upon the personal equation of the employers and upon the helplessness of their employees, and to a very inexact degree upon the cost of labor in relation to the cost of production.

From the foregoing tables it will be seen that a large number of women of 18 years of age and upward are employed at very low wages; it is indisputable that a great part of them are receiving compensation that is inadequate to meet the necessary cost of living.

The commission was further directed to report on the advisability of establishing a board or boards to which shall be referred inquiries as to the need and feasibility of fixing minimum rates of wages for women or minors in any industry. To this part of its duties the commission has given considerable attention. Such a system of legislation has been in operation in the State of Victoria, Australia, since, 1896, and in Great Britain since January, 1910. Some form of fixing legal minimum wages is also in operation in the other Australian States and in New Zealand.

The commission, after discussing the need of minimum-wage legislation in Massachusetts with the reasons for and objections to such legislation, concluded by recommending the enactment of a minimum-wage law, for the following reasons:

1. It would promote the general welfare of the State because it would tend to protect the women workers, and particularly the younger women workers, from the economic distress that leads to impaired health and inefficiency.

2. It would bring employers to a realization of their public responsibilities, and would result in the best adjustment of the interests of the employment and of the women employees.

3. It would furnish to the women employees a means of obtaining the best minimum wages that are consistent with the ongoing of the industry without recourse to strikes or industrial disturbances. It would be the best means of insuring industrial peace, so far as this class of employees is concerned.

4. It would tend to prevent exploitation of helpless women and, so far as they are concerned, to do away with sweating in our industries.

5. It would diminish the parasitic character of some industries and lessen the burden now resting on other employments.

6. It would enable the employers in any occupation to prevent the undercutting of wages by less humane and considerate competitors.

7. It would stimulate employers to develop the capacity and efficiency of the less competent workers in order that the wages might not be incommensurate with the services rendered.

8. It would accordingly tend to induce employers to keep together their trained workers and to avoid, so far as possible, seasonal fluctuations.

9. It would tend to heal the sense of grievance in employees, who would become in this manner better informed as to the exigencies of their trade, and it would enable them to interpret more intelligently the meaning of the pay roll.

10. It would give the public assurance that these industrial abuses have an effective and available remedy.

An investigation which preceded the enactment of the Oregon minimum-wage law, the results of which determined the action of

the legislature, was made by the Consumers' League of Oregon and published in January, 1913.¹

In presenting its report, the survey committee stated as the outstanding principles and facts which formed the basis of the demand for the proposed minimum-wage legislation the following:

(1) Each industry should provide for the livelihood of the workers employed in it. An industry which does not do so is parasitic. The well-being of society demands that wage-earning women shall not be required to subsidize from their earnings the industry in which they are employed.

(2) Owing to the lack of organization among women workers and the secrecy with which their wage schedules are guarded, there are absolutely no standards of wages among them. Their wages are determined, for the most part, by the will of the employer without reference to efficiency or length of service on the part of the worker. This condition is radically unjust.

(3) The wages paid to women workers in most occupations are miserably inadequate to meet the cost of living at the lowest standards consistent with the maintenance of the health and morals of the workers. Nearly three-fifths of the women employed in industries in Portland receive less than \$10 a week, which is the minimum weekly wage that ought to be offered to any self-supporting woman wage earner in this city.

(4) The present conditions of labor for women in many industries are shown by this report to be gravely detrimental to their health; and since most women wage earners are potential mothers, the future health of the race is menaced by these unsanitary conditions.

For these reasons your committee believes that the passage of the proposed bill for an act creating an industrial welfare commission is most important and we strongly recommend that the Consumers' League urgently petition the legislature for its enactment.

The purpose of the Consumers' League of Oregon in making its investigation of the wages and working conditions of women, as stated in its report, "was to secure accurate data (1) as to the wages paid in all lines of work to self-supporting women in this State, (2) as to the cost of living in Portland and the smaller towns of the State, with a view to determining whether wage-earning women are receiving a wage that permits them to live so as to preserve their health and their morals, and to save against future needs, (3) as to conditions which would affect the health or morals of the workers." * * *

1. Cards were distributed among women workers, and when filled out were collected by investigators. To reach workers, no distinction was made in establishments. A list of different industries employing women was drawn up and every house on the list visited. Over 2,000 cards were distributed; 509 were collected in Portland. Workers were approached at lunch and closing hour and in their homes. * * *

¹ Report of the Social Survey Committee of the Consumers' League of Oregon on the Wages, Hours, and Conditions of Work and Cost and Standard of Living of Women Wage Earners in Oregon with Special Reference to Portland. Portland, Ore., January, 1913.

2. A second method was to solicit wage schedules from employers and to ask their views on the labor conditions of female employees and their opinion as to the feasibility of the proposed bill.

3. A third line pursued was that of engaging to work in different establishments, in order to obtain first-hand information as to conditions and to corroborate both employers' and employees' reports. The investigators worked as employees in 12 factories.

4. A fourth line pursued was that (a) of visiting boarding and rooming houses and private families who advertised room and board, in all sections of the city, to discover the actual cost of food and lodging; (b) of visiting department stores for the lowest and average prices on articles of wear; (c) the director of the investigation went to southern, western, and eastern sections of the State, visiting in all 14 towns, organizing subcommittees to gather wage statistics and collecting information herself on wages, conditions of labor, and cost of living. The result is that information has been gained about 39 occupations employing women, and 8,736 women workers, 7,603 of these being in Portland, 1,133 outside.

The report shows in Portland the weekly wages of 3,217 women employees in various occupations. These are briefly summarized in the following table. It should be noted that in some of the occupations the number of employees for whom wages are reported was somewhat small for use in a generalization.

PER CENT OF WOMEN WHOSE WEEKLY WAGES WERE LESS THAN SPECIFIED AMOUNT—PORTLAND, OREG.

Industry or occupation	Number whose earnings were reported.	Per cent whose weekly wages were—				
		Under \$5.	Under \$6.	Under \$7.	Under \$8.	\$8 and over.
Department stores.....	2,078	2.5	6.6	15.1	7.0	68.8
Factories.....	427	7.3	13.6	13.1	14.3	51.8
Hotels and restaurants.....	213		.5	3.8	1.4	94.4
Laundries.....	140			20.7	27.1	52.1
Office help (not including stenographers).....	126		2.4	10.3	5.6	81.7
Stenographers.....	85		1.2	2.4	5.9	90.6
Printing trades.....	57			19.3	7.0	73.7
Telephone operators.....	52			17.3	9.6	73.1
Miscellaneous.....	39	5.1		5.1	7.7	82.1
Total.....	3,217	2.6	6.2	13.8	8.4	68.9

Outside of Portland information in regard to wages was collected for 1,133 women wage earners in 26 towns. The data in regard to some of the occupations are, as in the case of Portland, somewhat meager.

WAGE INFORMATION FOR 1,133 WOMEN WAGE EARNERS IN OREGON (OUTSIDE OF PORTLAND).

Industry.	Number of employees.	Average monthly wage.
Canneries.....	88	\$35.00
Condensed milk.....	6	38.00
Woolen mills.....	280	37.50
Hotels and restaurants.....	18	31.65
Laundries.....	518	39.50
Office help.....	45	35.50
Retail stores.....	140	39.21
Stenographers.....	16	50.00
Telephone operators.....	22	33.07
Total.....	1,133	-----

Summarizing its investigation in regard to cost of living in Portland, the commission concluded that—

Ten dollars a week is the very least on which the average self-supporting woman can live decently and keep herself in health in Portland. This means a steady income of \$520 per year. How this would have to be spent were women in all cases living as they should, is indicated by the following schedule:

Room and board, \$25 per month.....	\$300
Clothing.....	130
Laundry bills.....	25
Car fare.....	30
Doctor bills.....	15
Lodge and church dues.....	10
Recreation, including vacation.....	25
Education and reading.....	10
Total.....	545

If we were to omit the sum allowed for recreation, \$25 a year, we would bring the actual cost to \$520 a year, or \$10 a week, for bare necessities. That a legitimate amount of recreation is a necessity to maintain the efficiency of a worker is a theory that some persons insist upon, but which others refuse to admit.

The material in regard to cost of living outside of Portland is based on data secured from 101 young women in the State at large. It showed an average cost of living of \$9.82 a week, or \$42.55 a month. The details are shown in the following statement:

Average amount spent annually by 101 women wage earners in miscellaneous occupations in Oregon (outside Portland). Information obtained from Ashland, Baker, Eugene, Forest Grove, La Grande, Medford, Oregon City, Pendleton, Salem, and Vale:

Room and board.....	\$278.62
Clothing.....	137.50
Laundry.....	16.00
Car fare.....	21.00
Doctor and dentist.....	18.00
Church and lodge.....	12.52
Reading.....	6.54
Recreation.....	20.50
Total.....	510.68
\$9.82 a week; \$42.55 a month.	

NEW YORK.

The most extensive investigation which has been made in this country, with a definite purpose of studying the wages of women and inquiring into the advisability of providing a means for fixing minimum rates by law, has recently been completed by the New York State Factory Investigating Commission. The concluding part of the report is still in press and is not yet available, but a paper by Dr. Howard B. Woolston, director of the investigation, briefly sums up the results.¹

The scope of the New York investigation is defined as follows:

First. What wages are actually paid in typical industries throughout the State?

Second. Are these wages sufficient to maintain employees in simple decency and working efficiency?

Third. Are the industries able to increase wages upon the basis of the earning capacity of labor?

The investigations of the commission were limited to confectionery, paper-box² and shirt factories, and retail stores. In these four branches of industry women and children were found to constitute from 60 to 75 per cent of the working force. Information concerning rates of pay and actual earnings, taken directly from pay rolls, was tabulated for nearly 105,000 wage earners from 29 principal trade centers in New York State. These numbers included from two-thirds to three-fourths of all employees in the industries in question.

Of over 90,000 persons for whom weekly rates of pay were tabulated, more than three-fifths of the males received less than \$15 when working full time, and more than three-fourths of the women and girls less than \$10 a week. In the stores half the males received less than \$14 and half the females less than \$7.50. In shirt and paper-box factories half the males received less than \$12 and half the females less than \$6.50 a week, while in the candy factories wages fell below \$11 for half the males and below \$6 for half the females. More than 7,000 female employees in the four industries (one-sixth of the total number of women and girls) were working at rates under \$5 per week.

As in other investigations of this character, the different rates paid in factories in the same locality for identical work are strikingly shown. One wholesale candy factory in Manhattan is mentioned, where no male laborer and no female hand-dipper was paid as much as \$8 a week, and no female packer as much as \$5.50. In another establishment of the same class, in the same borough, every male laborer received \$8 a week or over and more than half the female dippers and packers exceeded the rates given in the former plant.

¹ Wages in New York. The Survey, Feb. 6, 1915, pp. 505-511.

² Third report of the Factory Investigating Commission (1914) gives the results of the investigation of the confectionery and paper-box industries.

One large department store in Manhattan paid 86 per cent of its saleswomen \$10 a week or more; another paid 86 per cent of its saleswomen less than \$10 a week. Apparently no well-established standard of wages existed in these trades. The pay is fixed by individual bargain and labor is worth as much as the employer agrees to pay.

The New York commission as a part of its investigation attempted to ascertain the addition to manufacturing cost or selling price which would result from a minimum-wage law with rates of pay fixed according to the necessary cost of living. As the result of this inquiry, it was estimated that by selling for \$1 articles marked 98 cents or 99 cents, the total increase in wages in the department stores would be covered without causing displacement of workers, decreasing profits, or improving methods of business. This slight addition to prices would secure an average weekly increase of \$1.38 to 4,000 girls and \$2.38 to 13,000 women (29 and 36 per cent above their respective average earnings). In order to raise the wages of over 2,000 young women in New York candy factories from an average of \$5.75 to a minimum of \$8 a week, an additional charge of 18 cents a hundred pounds is all that would be necessary; in other words, by raising the price of candy less than 2 mills a pound, the weekly pay of three-fourths of the women could be raised nearly 40 per cent.¹

Summing up the results of the investigation of the New York commission in regard to wages in New York, Dr. Woolston says:

The results of the investigation have proved conclusively that half the workers in low-skilled lines do not receive sufficient wages to sustain themselves independently nor to support their families properly. Although the earning capacity of most workers is relatively high, the large numbers of young women who live at home and the constant influx of immigrants with low standards of comfort depress the rates of wages. Moreover, irregular employment entails great loss of earnings and promotion is generally slow and uncertain even for steady workers with years of experience.

The rates fixed by many establishments are not based upon a consideration of the needs or efficiency of the workers, nor upon the capacity of the business to pay more, but upon the judgment of an individual manager and the custom in the trade.

Because of their youth, their inexperience, and their timidity, most workers can not individually secure advancement; because of lack of organization they can not obtain trade agreements upon wages. Meanwhile this situation of a great multitude of underpaid working people has a direct bearing upon the growth of poverty, vice, and degeneracy throughout the community. If employer and employee will not unite to remedy conditions, the State must act in order to secure public welfare.

¹ This estimate in regard to wages in candy factories is from a statement of Dr. Woolston in the *American Economic Review*, March, 1915, p. 282.

Based upon these investigations and its study of the effect of minimum-wage legislation already existing, the New York commission submitted to the New York Legislature, with its recommendations, a bill providing for the establishment of a minimum-wage commission, modeled upon the Massachusetts act, with enforcement by publication of the names of employers paying less than the minimum rate fixed. The text of this bill is given at the end of this Bulletin.¹

¹ Much similar information in regard to the wages and conditions of wage-earning women is given in the various reports on recent investigations devoted to the subject. Some of these reports are the following:
Connecticut.

Report of the Special Commission to Investigate the Conditions of Wage-Earning Women and Minors in the State, 1913.

Report of the Bureau of Labor on Conditions of Wage-Earning Women and Girls, 1914.

Kentucky.

Report of the Commission to Investigate the Conditions of Working Women in Kentucky, 1911.

Michigan.

Special Investigation of Working Conditions of Women and Girls (in 30th Annual Report of Department of Labor, 1912-1913).

Missouri.

Report of the Senate Wage Commission for Women and Children in the State of Missouri to the Senate of the 48th General Assembly of Missouri, January, 1915.

Report on the Wage-Earning Women of Kansas City, published by the Board of Public Welfare Bureau of Labor Statistics, 1912-1913.

There is also much information in regard to the wages of working women in many of the recent Bulletins of the United States Bureau of Labor Statistics, especially those in the Women in Industry Series and in the Wages and Hours of Labor Series.

LEGISLATION IN FORCE IN THE UNITED STATES.

With the purpose of correcting the conditions in the various States, as indicated by the investigations just referred to and by a number of similar studies, minimum-wage legislation has been enacted in nine States. The laws enacted in these nine States are of three distinct types:

(1) Where the specific minimum wage is fixed by the legislature and embodied in the statute, as in Utah.

(2) Where the minimum wage is fixed by the administrative authority, the minimum wage commission, upon the investigations and recommendations of advisory wage boards made up of representatives of employers, employees, and the public, and where the only power of enforcement is such as results from the power of the commission to publish the names of those employers paying less than the minimum rate. States having laws of this type are Massachusetts and Nebraska.

(3) Where the minimum wage is determined as in Massachusetts and Nebraska, as above described, but where the commission is given powers of enforcement, and a penalty of fine or imprisonment or both is provided for in case of violation of the law by payment of rates less than the minimum fixed. States having laws of this class are California, Colorado, Minnesota, Oregon, Washington, and Wisconsin.

The laws of the various States have also numerous other differences, most of them of less importance, which may best be seen in the comparative analysis given below. The California act, it should be pointed out, is in a somewhat different position from any of the other laws so far as its legal validity is concerned, from the fact that in November, 1914, a constitutional amendment was adopted granting specific authority to the legislature to place the fixing of wage rates for women and minors in the hands of a commission, thus removing the subject from the field of legal controversy.

Ohio, it should be noted, in 1912 adopted a constitutional amendment authorizing the legislature to establish a minimum wage, the authorization in this case extending to men as well as to women and children. The words of the Ohio amendment are as follows:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the health, safety, and general welfare of all employees, and no provision of the constitution shall impair or limit this power."

COMPARATIVE ANALYSIS OF AMERICAN MINIMUM-WAGE LAWS.

LAWS IN FORCE.

California: Acts of 1913, chapter 324 (May 26, 1913), in effect August 10, 1913. No wage determination yet made.

Colorado: Acts of 1913, chapter 110 (May 14, 1913). No determination yet made.

Massachusetts:

Acts of 1912, chapter 706 (June 4, 1912), in effect July 1, 1913.

Acts of 1913, chapters 330 (Mar. 21, 1913) and 673 (May 19, 1913), in effect Mar.

21, and July 1, 1913. First wage determination in effect August 15, 1914.

Minnesota: Acts of 1913, chapter 547 (Apr. 26, 1913), in effect June 26, 1913. Wage orders issued in October, 1914, suspended by injunction.

Nebraska: Acts of 1913, chapter 211 (Apr. 21, 1913), in effect July 17, 1913. No wage determination yet made.

Oregon: Acts of 1913, chapter 62 (Feb. 17, 1913), in effect June 2, 1913. First wage determination in effect October 4, 1913.

Utah: Acts of 1913, chapter 63 (Mar. 18, 1913). Wage rates in effect with the law.

Washington: Acts of 1913, chapter 174 (Mar. 24, 1913), in effect June 13, 1913. First wage determination in effect June 27, 1914.

Wisconsin: Acts of 1913, chapter 712 (July 31, 1913), in effect August 1, 1913. No wage determination yet made.

INDUSTRIES COVERED.

California: All occupations, trades, and industries in which the wages paid to women and minors are inadequate or the hours or conditions of labor prejudicial to health, morals or welfare.

Colorado: All mercantile, manufacturing, laundry, hotel, restaurant, telephone, or telegraph businesses in which the wages paid to female or minor employees are inadequate.

Massachusetts: All occupations in which the wages paid to a substantial number of female employees are inadequate, or in which the majority of employees are minors.

Minnesota: All occupations in which the wages paid to one-sixth or more of the women or minor employees are less than a living wage.

Nebraska: All occupations in which the wages paid to a substantial number of female employees are inadequate.

Oregon: All occupations in which, for any substantial number of women workers, the hours are unreasonable, or conditions detrimental, or wages inadequate, and all occupations in which minors are employed.

Utah: All regular employers of female workers.

Washington: All occupations, trades, or industries in which the wages of female employees are inadequate or the conditions of work prejudicial to health and morals, and all occupations in which minors are employed.

Wisconsin: All occupations in which the wages paid to any female or minor employee are not a living wage.

EMPLOYEES TO WHOM MINIMUM WAGE MAY BE MADE APPLICABLE.

California: Women, and minors under 18 years of age.

Colorado: Female employees over 18 years of age, and minors under 18.

Massachusetts: Female employees, and minors under 18 years of age.

Minnesota: Women, and minors (males under 21 years of age and females under 18).

Nebraska: Female employees, and minors under 18 years of age.

Oregon: Women, and minors under 18 years of age.

Utah: Females only.

Washington: Women, and minors under 18 years of age.

Wisconsin: Females, and minors (under 21 years of age).

BASIS TO BE USED IN FIXING MINIMUM RATES OF WAGES.

- California: A wage adequate to supply to such women and minors the necessary cost of proper living and to maintain their health and welfare.
- Colorado: A wage suitable for female employees over 18 years of age, and also a wage suitable for minors under 18, taking into consideration the cost of living, the financial condition of the business, and the probable effect thereon of any increase in the minimum wage.
- Massachusetts: A wage suitable for a female employee of ordinary ability, and wages suitable for learners and apprentices, and for minors under 18 years, taking into consideration the needs of the employees, the financial condition of the occupation, and the probable effect thereon of any increase in the minimum wage.
- Minnesota: Wages sufficient for living wages for women and minors of ordinary ability, also minimum wages sufficient for living wages for learners and apprentices.
- Nebraska: A wage suitable for a female employee of ordinary ability, and wages suitable for learners and apprentices, and for minors under 18 years, taking into consideration the needs of the employees, the financial condition of the occupation, and the probable effect thereon of any increase in the minimum wage.
- Oregon: A rate adequate to supply the necessary cost of living to women workers of average ordinary ability and maintain them in health. Suitable wages for learners and apprentices. Suitable wages for minors.
- Utah: Rates are specified in law.
- Washington: A wage adequate in the occupation or industry to supply women over 18 years of age the necessary cost of living and maintain them in health. Wages suitable for minors in any occupation.
- Wisconsin: A living wage, that is, a wage sufficient to enable the female or minor employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.

PROVISION OF LAW IN REGARD TO FIXING RATES BELOW THE STANDARD MINIMUM OR ISSUING LICENSES FOR DEFECTIVES.

- California: No provision for special rates for minors or learners. Special license to women only if physically defective by age or otherwise, renewable semiannually.
- Colorado: Separate minimum rate for minors under 18. Special license for any female over 18, physically defective.
- Massachusetts: Separate minimum for minors under 18 and for learners and apprentices. Special license for women physically defective.
- Minnesota: Separate minimum for learners and apprentices. Special license for women physically defective, but the number of such licensed persons shall not exceed one-tenth of the whole number of workers in any establishment.
- Nebraska: Separate minimum for minors under 18 and for learners and apprentices. Special license for women physically defective.
- Oregon: Separate minimum for minors and for learners and apprentices. Special license for women physically defective or crippled by age or otherwise.
- Utah: Rate for minors and for learners and apprentices specified in law. No provision for defectives.
- Washington: Separate minimum for minors. Special license for apprentices, for period to be specified. Special license for women physically defective or crippled by age or otherwise.
- Wisconsin: Minors in an occupation which is a "trade industry" must be indentured. Special license commensurate with ability for women or minors unable to earn the living wage.

COMPOSITION OF ADMINISTRATIVE AND ADVISORY BODIES WHICH FIX MINIMUM WAGES.**California:**

Administrative authority.—Industrial welfare commission, five members, at least one to be a woman.

Advisory board.—Wage board, equal number of representatives of employers and of employees in occupation, trade, or industry in question, with a member of the commission as chairman.

Colorado:

Administrative authority.—State wage board, three persons, one a representative of labor, one an employer, at least one to be a woman. No advisory wage board.

Massachusetts:

Administrative authority.—Minimum wage commission, three persons, one of whom may be a woman.

Advisory board.—Wage board, not less than six representatives of employers, an equal number of representatives of female employees in the occupation, and one or more disinterested persons representative of the public; the representatives of the public not to exceed one-half of the number of representatives of either of the other parties. One of the representatives of the public shall be named as chairman.

Minnesota:

Administrative authority.—Minimum wage commission, three persons, commissioner of labor, one an employer of women, and one a woman, who shall act as secretary.

Advisory board.—Not less than 3 nor more than 10 representatives of employers, and an equal number of representatives of workers in the occupation, and one or more disinterested persons to represent the public, not to exceed the number of representatives of either of the other parties. One-fifth of members shall be women, and at least one of the representatives of the public shall be a woman.

Nebraska:

Administrative authority.—Minimum wage commission, four persons, the governor, deputy commissioner of labor, a member of the political science department of the University of Nebraska, and one citizen of the State. At least one member shall be a woman.

Advisory board.—Wage board, not less than three representatives of employers and an equal number of representatives of female employees in the occupation, and three representatives of the public. The chairman of the commission shall be chairman of the wage board and the secretary of the commission its secretary.

Oregon:

Administrative authority.—Industrial welfare commission, three persons, so far as practicable one representative of the interests of the employing class, one representative of the interests of the employed class, and one who will be fair and impartial between employers and employees and work for the best interests of the public.

Advisory board.—Conference, not more than three representatives of employers, an equal number of representatives of employees in the occupation, and not more than three disinterested representatives of the public, and one or more commissioners. The chairman shall be named by the commission.

Utah:

Administrative authority.—Commissioner of immigration, labor, and statistics.

Advisory board.—None.

Washington:

Administrative authority.—Industrial welfare commission, five persons, commissioner of labor and four persons, no one of whom has at any time within five years been a member of any manufacturers' or employers' association or of any labor union.

Advisory board.—Conference, an equal number of representatives of employers and employees in the occupation and one or more representatives of the public, not exceeding the number of representatives of either of the other parties. A member of the commission shall be chairman.

Wisconsin:

Administrative authority.—Industrial commission, three persons.

Advisory wage board.—Selected so as fairly to represent employers, employees, and the public.

PROCEDURE IN FIXING MINIMUM WAGE.

California:

1. The commission shall investigate and ascertain the wages paid and the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed, with special reference to the comfort, health, safety, and welfare of such employees.
2. The commission may call a conference or wage board if, after investigation, it is of the opinion that in any occupation, trade, or industry the wages paid to women and minors are inadequate to supply the cost of proper living, or the hours and conditions of labor are prejudicial to the health, morals, or welfare of the workers.
3. The wage board shall report to the commission its findings for the occupation, trade, or industry in question, including an estimate of the minimum wage adequate to supply to women and minors the necessary cost of proper living and to maintain the health and welfare of such employees, the number of hours of work per day consistent with the health and welfare of such women and minors, and the standard conditions of labor demanded by the health and welfare of such women and minors.
4. The commission, upon its own motion or upon petition, shall hold a public hearing, after public advertisement giving at least 14 days' notice, upon the minimum wage, the maximum hours of work, and the standard conditions of labor for women and minors.
5. The commission may, after such public hearing, in its discretion, make a mandatory order, to be effective after 60 days, specifying the minimum wage, the maximum hours, and the standard conditions of labor for women and minors in the occupation in question. The labor commissioner shall mail, so far as practicable, a copy of the order to all employers in the occupation in question.
6. The commission may, upon its own motion or upon petition, after a public hearing held after due notice, rescind, alter, or amend any prior order.
7. Upon appeal to the court, the determination of the commission may be set aside only upon the ground that the commission acted without or in excess of its powers, or that the determination was procured by fraud.

Colorado:

1. The State wage board shall investigate the wages paid to female employees above the age of 18 years, and minor employees under 18 years of age, if it has reason to believe the wages paid any such employees are inadequate to supply the necessary cost of living, maintain them in health, and supply the necessary comforts of life. It shall also investigate the cost of living and take into consideration the financial condition of the business in question and the probable effect thereon of any increase in the minimum wage.

Colorado—Concluded.

2. The wage board shall fix the minimum wage suitable for the female employees over 18 years of age in such business or in any or all of the branches thereof, and also a suitable minimum wage for minors under 18 years of age employed in the same business.
3. The wage board shall give public notice by advertisement of the minimum-wage determination and of a public hearing thereon, to be held in 30 days. Notice shall also be mailed to employers in the business affected.
4. The wage board, after such public hearing or after 30 days if no public hearing is demanded, shall issue an obligatory order, effective after 60 days, specifying the minimum wages for women and minors, or both, in the occupation affected. The order shall be published in a newspaper in the county or counties in which the business affected is located, and a copy of the order shall be mailed to all employers in the business affected.

Massachusetts:

1. The commission shall investigate the wages paid to female employees in any occupation, if it has reason to believe that the wages paid to a substantial number of such employees are inadequate to supply the necessary cost of living and maintain the worker in health.
2. The commission shall establish a wage board if, after an investigation, it is of the opinion that in the occupation in question the wages paid to a substantial number of female employees are inadequate to supply the necessary cost of living and to maintain the worker in health.
3. The wage board shall endeavor to determine the minimum wage suitable for female employees, and also for learners and apprentices, and for minors under 18 years of age.
4. The wage board shall report its minimum-wage determination to the commission with the reasons therefor and the facts relating thereto.
5. The commission shall review the report of the wage board and may approve, disapprove, or recommit the determinations.
6. The commission shall give a public hearing to employers paying less than the minimum wage approved, after notice of not less than 14 days, if it approves any or all of the determinations of the wage board.
7. The commission shall enter a decree of its findings and note the names of employers not accepting the minimum, if it, after public hearing, finally approves the determinations.
8. The commission shall publish in one newspaper in each county a summary of its findings and recommendations.
9. The commission shall publish the facts as to acceptance of its recommendations and may publish names of employers following or refusing to follow its recommendations.
10. Upon appeal to the court and court review, if the court finds that in the case of an employer compliance with the minimum-wage decree would render it impossible for him to conduct his business at a reasonable profit, it may issue an order restraining the commission from publishing the name of the complainant as one who refuses to comply with the recommendations of the commission.

Minnesota:

1. The commission at its discretion may investigate, and at the request of 100 employees shall investigate forthwith, the wages paid to women and minors.

Action of the commission mandatory under certain circumstances.

2. The commission shall forthwith proceed to establish minimum rates if, after investigation of any occupation, it is of the opinion that the wages paid to one-sixth or more of the women and minors are less than living wages (sufficient to maintain the worker in health and supply him with the necessary comforts and conditions of reasonable life).

Minnesota—Concluded.

3. The commission shall determine the minimum wages sufficient for living wages for women and minors and for learners and apprentices.
4. The commission shall issue an order, effective after 30 days, making the wages determined the minimum wages.
5. A copy of the order shall be mailed to each employer affected and the original filed with the commissioner of labor.

Action of the commission discretionary.

2. The commission may at its discretion establish an advisory board in any occupation.
3. The advisory board shall recommend to the commission an estimate of the minimum wages sufficient for living wages for women and minors of ordinary ability, and an estimate of the minimum wages sufficient for living wages for learners and apprentices.
4. The commission shall review these estimates, and if it approves them shall issue an order, effective after 30 days, making the wages determined the minimum wages.
5. A copy of the commission's order shall be mailed, so far as practicable, to all employers affected, and the original filed with the commissioner of labor.
6. The commission must, at the request of approximately one-fourth of the employers or employees in an occupation, reconsider the rate established. The commission may also reconsider rates on its own initiative.

Nebraska:

1. The commission shall investigate the wages paid to female employees in any occupation, if it has reason to believe wages paid to a substantial number of such employees are inadequate to supply the necessary cost of living and to maintain the worker in health.
2. The commission shall establish a wage board if, after investigation, it is of the opinion that in the occupation in question the wages paid to a substantial number of female employees are inadequate to supply the necessary cost of living and to maintain the worker in health.
3. The wage board shall endeavor to determine the minimum wage suitable for female employees, and also for learners and apprentices, and for minors under 18 years of age.
4. The wage board shall report its minimum-wage determination to the commission with the reasons therefor and the facts relating thereto.
5. The commission shall review the report of the wage board and report its review to the governor.
6. The commission shall give a public hearing to employers paying less than the minimum wage approved, after 30 days' notice, if it approves any or all of the determinations of the wage board.
7. The commission shall enter a decree of its findings and note the names of employers not accepting the minimum wage, if after public hearing it finally approves the determination.
8. The commission shall publish in one newspaper in each county, within 30 days, a summary of its findings, with the names of employers not accepting the minimum wage and the minimum wages paid by such employers.
9. The commission may, on petition of employers or employees, reconvene a wage board or establish a new one.
10. Upon appeal to the court and court review, if the court finds that in the case of an employer compliance with the minimum-wage decree would be likely to endanger the prosperity of the business to which it is applicable, an order shall issue from the court revoking the decree.

Oregon:

1. The commission shall investigate and ascertain the wages, hours of labor, and conditions of labor of women and minors.
2. The commission shall convene a conference¹ on the subject investigated, if after investigation it is of the opinion that any substantial number of women workers in any occupation are working for unreasonably long hours or are working under surroundings or conditions detrimental to their health or morals or are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health.
3. The conference shall consider and inquire into and report on the subject submitted to it by the commission; the commission shall present to the conference all information and evidence in its possession or under its control which relates to the subject and any witnesses whose testimony it deems material.
4. The conference shall make recommendations to the commission concerning the occupation under inquiry on: (a) Standards of hours of employment for women workers and what are unreasonably long hours of employment for women workers; (b) standards of conditions of labor for women workers and what surroundings or conditions—sanitary or otherwise—are detrimental to the health or morals of women workers; (c) standards of minimum wages for women workers and what wages are inadequate to supply the necessary cost of living to women workers and maintain them in health; also, when it appears proper or necessary, suitable minimum wages for learners and apprentices and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages for the regular women workers in the occupation.
5. The commission shall consider and review the recommendations of the conference and may approve or disapprove any or all of them and may resubmit any of the subjects to the same or to a new conference.
6. The commission shall hold a public hearing concerning any of the recommendations which it approves, after notice published not less than once a week for four successive weeks in not less than two newspapers.
7. The commission shall issue an order, effective after 60 days, to give effect to the recommendations, to be mailed, so far as practicable, to all employers affected.

Washington:

1. The commission shall ascertain the wages and conditions of labor of women and minors.
2. The commission shall call a conference,¹ if, after investigation, it finds that in any occupation, trade, or industry, the wages paid female employees are inadequate to supply them necessary cost of living and to maintain the workers in health or that the conditions of labor are prejudicial to the health or morals of the workers.
3. The conference shall consider and recommend to the commission the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health and the standards of conditions of labor demanded for the health and morals of the employees.
4. The commission shall review the recommendations of the conference and may approve or disapprove any or all of them and may resubmit any of the subjects to the same or to a new conference.

¹ Same as a wage board in other States.

Washington—Concluded.

5. The commission, after approval, shall issue an obligatory order, effective after 60 days, or, if circumstances are unusual, after a longer period, specifying the minimum wage and the standard conditions of labor. The commission shall mail, so far as is practicable, a copy of its order to all employers affected. When the minimum wage is fixed, it shall not be changed for one year.
6. Appeal may be made to court, but on questions of law only.

Wisconsin:

1. The commission may, upon its own initiative, and shall upon complaint, investigate and determine whether there is reasonable cause to believe that the wages paid to any female or minor employee is not a living wage (sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare).
2. The commission shall appoint an advisory wage board to assist in its investigations and determinations if, upon investigation, it finds reasonable cause to believe that the wages paid to any female or minor employee are not a living wage.
3. The commission, with the assistance of the advisory wage board, shall investigate and determine the minimum living wage for all female and minor employees within the same class, as established by the classification of the commission.

ENFORCEMENT OF THE LAW.

California:

Upon complaint of underpayment of any person, the commission shall investigate and take proceedings to enforce payment.

Underpayment a misdemeanor, punishable by fine of not less than \$50, or by imprisonment of not less than 30 days, or by both fine and imprisonment. Underpaid employee may recover unpaid balance.

Colorado:

Justices of the peace to have jurisdiction in case of violation of act.

Violation of act or orders a misdemeanor, punishable by fine not to exceed \$100, or imprisonment not to exceed 3 months, or by both fine and imprisonment.

Underpaid employee may recover balance due.

Massachusetts: Commission to determine whether employers obey decrees. Names of underpaying employers to be published in newspapers.

Minnesota:

Commission to enforce provisions of act.

Violation of act or orders a misdemeanor, punishable by fine of from \$10 to \$50, or by imprisonment of from 10 to 60 days. Underpaid employee may recover.

Nebraska: Commission to determine whether employers obey decrees. Names of underpaying employers to be published in newspapers.

Oregon: Commissioner of the bureau of labor statistics to enforce rulings.¹ Violation of orders punishable by fine of from \$25 to \$100, or by imprisonment of from 10 days to 3 months, or by both fine and imprisonment. Underpaid employee may recover.

Utah: Commissioner of immigration, labor, and statistics to enforce act. Underpayment a misdemeanor.

Washington: Commission to investigate complaint and take proceedings. Violation of order or act a misdemeanor, punishable by fine of \$25 to \$100. Underpaid employee may recover.

Wisconsin: Commission to investigate complaints and take proceedings. Violation of act or order punishable by a fine of not less than \$10 nor more than \$100.

¹ See page 66.

OPERATION OF AMERICAN MINIMUM-WAGE LAWS.

As has already been noted, the period since any of the minimum-wage determinations came into force is too brief to permit, at the present time, the formation of any judgment as to the ultimate effect of the laws, either upon the industry or upon employment therein. The immediate result of wage determinations is not necessarily indicative of what the later effect may be. It is likely that employers, when they find themselves compelled to increase the wages of the lowest-paid workers, will endeavor to provide for some system of training which will result in an increase of efficiency sufficient to balance the increased rates of pay. In other ways it is probable that the industries and the employees will find means to adapt themselves to the conditions created by the new requirements of the laws.

While the brief period during which any minimum-wage determinations have been in effect thus limits the value of the conclusions which may be drawn from a study of the operation of the laws, yet the great benefit expected in the case of the worker, on the one hand, and the serious disturbance to the industry which was predicted, on the other hand, warrants a careful study of any material which will throw light on the real effects, however far such material may fall short of covering the whole subject. It has seemed desirable, therefore, to present rather fully whatever information is available showing the operations of any of the American minimum-wage laws. It should be pointed out that the most of this material is taken from the official reports, and that such conclusions as are stated are the conclusions of the authority charged with the administration of the law.

CALIFORNIA.

The minimum-wage law in California is administered by the industrial welfare commission. While the commission was organized in October, 1913, the work of investigating was not begun until the end of February, 1914.

Since its organization the commission has been actively engaged in making investigations as a preliminary step to the appointment of wage boards and the fixing of minimum-wage rates. The commission reports that its investigations have been considerably hampered and delayed by the public interest in and the discussion of a constitutional amendment proposed by a resolution of the State legislature of 1913, to be submitted to a vote of the people on November 3, 1914. As there was some active opposition to the passage of the amendment, the investigations of the commission were in consequence

delayed until after the results of the election could be known. The amendment was carried by a majority of over 84,000 votes. It is as follows:

SECTION 17½. The legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety, and general welfare of any and all employees. No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon any commission now or hereafter created such power and authority as the legislature may deem requisite to carry out the provisions of this section.

COLORADO.

Although the Colorado act came into effect August 12, 1913, the board was not appointed until March 23, 1914. Then, through delay in securing a permanent executive officer, the board did not begin the study of local wage conditions until August 1, 1914. Data secured after that date forms the basis of the First Report of the State Wage Board of Colorado, for the biennial period ending November 30, 1914. Because of this delay in taking up its work, the board notes the fact that the data presented are somewhat fragmentary and incomplete.

The board's report shows that it has secured wage data from employers of women in department stores, 5, 10, and 15 cent stores, bakeries, binderies, factories, and laundries. Such data were partially checked by statements from the women themselves. The results showed that of the 3,524 employees included, 23 per cent received less than \$6 per week, and 54 per cent less than \$8. Data were also secured in regard to telephone operatives. The board made no extensive investigations of cost of living, but reports that such facts as it has been able to secure lead to the conclusion that "the cost of living in Denver is no less than in any other cities where, after extensive investigation, it has been found that no woman can secure the necessities of decent living for less than \$8 a week."

In regard to certain changes desirable in the law, the report of the board contains the following recommendation:

From our experience it is evident that additional legislation is required in order to make efficient the present statute, limiting and defining more clearly the powers and duties of the board. In the fixing of a minimum wage in a particular industry or group of industries, adequate provision should be made for those who really know most about the case to be represented on the determining body. In other words, the wage board should be given power to call together a voluntary subordinate committee. If, for example, the laundry business is under consideration, this subordinate committee should be made to represent men in the laundry business and people employed in laundries—those who best know the needs of their particular occupation—and, besides these, a certain number from the public at large. This committee should be authorized to report its findings to the wage board, which is bound to take them into consideration in fixing the minimum wage.

MASSACHUSETTS.

The minimum-wage law in Massachusetts came into effect July 1, 1913. The report of the commission upon the first six months of its work¹ stated that investigations had been made into the wages of women employees in three industries, the brush-making industry,² the corset industry,³ and the confectionery industry,⁴ and had been begun in other industries. These industries were chosen on account of the large proportion of women workers among the employees and the low wages indicated by information obtained. In the brush and corset industries the study was extended to include every establishment within the State employing women. Later the commission took up the investigation of the wages of women in laundries,⁵ and is now engaged upon a study of the wages of women employed in department and other retail stores.

Throughout these investigations substantially the same method has been followed. In the investigation of women in department and other retail stores, which is now being carried on, the United States Bureau of Labor Statistics and the Commission on Industrial Relations are cooperating with the minimum wage commission in a study of the amount and causes of unemployment or lost time in the same stores and among the same employees as are the subject of study by the minimum wage commission.

The method of the commission provided for securing the fullest possible information in regard to earnings as well as rates of wages. Transcripts of the pay rolls for the preceding 52 weeks for all female employees were taken, and for a large number personal data regarding age, birthplace, family and living conditions were also obtained. In addition a study was made of the processes in which women were engaged. The commission reported that its investigation showed that a considerable number of women workers were receiving wages inadequate to supply them with the necessities of life. Almost exactly two-thirds of the brush workers for whom records were available received an average wage of less than \$6 per week. A smaller proportion of corset workers, 35.5 per cent, received less than \$6 a week.

The commission was somewhat hampered by the defective records of employers, especially those in regard to time. Certain manufacturers made the statement that "Not only do a large number of employees work for only part time, but also that failure to work for full time is due not to lack of work in the factory but to choice on the part of the workers." An amendment to the law, requiring the

¹ First Annual Report of the Minimum Wage Commission of Massachusetts for the six months ending Dec. 31, 1913. Boston, 1914.

² Minimum Wage Commission Bulletin No. 1, January, 1914. Wages of Women in the Brush Factories in Massachusetts.

³ Ibid., No. 2, January, 1914. Wages of Women in the Corset Factories in Massachusetts.

⁴ Ibid., No. 4, October, 1914. Wages of Women in the Candy Factories in Massachusetts.

⁵ Ibid., No. 5, October, 1914. Wages of Women in the Laundries in Massachusetts.

keeping of time books, is expected to lessen the difficulties of the commission.

The conclusions of the commission upon its study of the brush-making industry have been summarized as follows in one of its reports:¹

1. The industry is a small one. It is apparently not growing in Massachusetts. According to the Thirteenth Census 8,258 persons were engaged in brush making in the United States. Of these, only 1,810 persons were employed in Massachusetts, which, however, is exceeded only by New York in number of persons employed, capital invested, and value of output. It is a business of rather small establishments, although three of the Massachusetts plants are considerably larger than most of their competitors in this country or abroad. Most of the Massachusetts workers are women. Elsewhere apparently the percentage of men is higher. New York, Ohio, Pennsylvania, New Jersey, Rhode Island, Maryland, and Illinois appear to be the chief American competitors of Massachusetts, and there is some competition from abroad, especially in low-grade brushes. Tariff protection has been somewhat reduced. The processes are rather numerous, and those in which women are employed require dexterity rather than strength. They are varied and are fully described in the bulletins referred to. Much of the work is monotonous rather than difficult. Machines are used to a rather limited extent, and machine operators require a period of from three months to a year before attaining maximum skill. For a few weeks learners represent no profit, and, in a few cases, loss. Subcontracting exists in some factories.

2. Wages are low everywhere. There is reason to suspect that this fact is a handicap to the industry. It adds to the difficulty of procuring a regular supply of efficient labor, and, in emphasizing the possibility of depending for profit upon low labor costs, lessens the incentive to the adoption of the most efficient business methods for reducing the cost of production. Such general tendencies of low wages are probably accentuated in an industry like brush making which "but recently graduated from the household and remains largely a handicraft."

3. Wages in Massachusetts are so low that a large majority of the female employees earn less than the guarded definition of a proper wage suggested by the statute. Two-thirds of the whole number of women employed earn less than \$6 a week.

The commission is aware that such a statement is not the whole story. To form an intelligent judgment one must know how many hours were worked to produce the earnings in question, and, in the many cases where the time is less than a full week, why no more hours were worked.

It is frequently said by employers in this and other industries that rates are adequate to produce more than a mere living wage, with a suggestion that the meager earnings of the many are due to the choice of the workers themselves. But when one considers how desperately many of these young women need money, the fact that so overwhelming a majority do not earn what by any reasonable computa-

¹ Minimum Wage Commission Bulletin No. 3, August 15, 1914. Statement and Decree Concerning the Wages of Women in the Brush Industry in Massachusetts.

tion could be called a living wage makes the explanation seem unconvincing. In a few cases the fallacy is obvious. A piece rate is fixed which permits a few exceptional workers to make fairly high earnings by the exercise of a degree of skill and application which an ordinary girl can not approach. Looked at from the point of view of the workers, the remedy in these cases is also obvious. In a much larger number of cases the difficulty is found in the fact that the worker does not or can not work the full time. Where the cause of this condition rests with the voluntary action of the girl, not superinduced by some physical or mental condition fairly chargeable to the employment, it may perhaps be disregarded in an inquiry of this character. Where, however, the part time is chargeable to the industry, either for reasons like those suggested or because under the organization of the industry work can not be supplied to the worker sufficient to keep her employed full time, it is a factor that can not be overlooked by a body charged with the duty of fixing minimum rates adequate for the purposes named in the statute. The question of short time seems to the commission, perhaps, the greatest single difficulty in connection with the wage situation in this and other Massachusetts industries. It was the subject of careful consideration by the wage board in reaching its determination, and more will be said of it in connection with the conclusions of the commission.

4. The investigation showed marked difference of wages between Massachusetts establishments. As in other industries it was found that smaller establishments frequently paid better wages than some of their larger and presumably more powerful competitors; and it was shown again that it is wholly possible for an establishment to exist and prosper in competition with others doing business under the same market conditions but enjoying the real or supposed advantage of lower wages for like processes. This is a factor of importance in determining the weight to be given to the matter of interstate competition.

5. The investigation convinced the commission that "the wages paid to a substantial number of female employees in the brush-making industry were inadequate to supply the necessary cost of living and maintain the worker in health."

It therefore became its duty to establish a wage board for the industry (St. 1912, ch. 706, sec. 4). Nominations were invited from employers and employees, and six representatives of each were accepted. Three persons were named by the commission to represent the public. One of the latter, Mr. Robert G. Valentine, was designated to be chairman. The board so constituted met for organization on December 12, 1913, and began its deliberations. The commission transmitted to the wage board the information in its possession and adopted the following rules for its guidance:

Rules of Procedure for the Brush Makers' Wage Board.

Name.—This board shall be known under the title of the brush makers' wage board.

1. *Organization.*—The chairman and secretary shall be appointed by the minimum wage commission.

2. *Term of office.*—The term of office of the brush makers' wage board shall be three years. Any representative of employers who becomes a worker at the trade shall vacate his seat. Any representative of workers who becomes an employer shall also vacate his seat. The question of fact shall in each case be determined by the commission. The commission may remove any member of the board who shall unreasonably fail to attend the meetings of the board, or who shall otherwise display unfitness for

service thereupon. Vacancies shall be filled in such manner as the commission may designate.

3. *Voting.*—Each member shall have one vote. If, in the opinion of the chairman, the question upon which a vote is to be taken is one of permanent importance, in order that the vote may be, so far as possible, an expression of the opinion of the whole board, the secretary shall obtain the vote of an absent member with his opinion in writing.

4. *Powers, duties, and procedure.*—The board shall examine the material submitted by the commission. It shall consider the question: What is the sum required a week to maintain in frugal but decent conditions of living, a self-supporting woman employed in a brush-making establishment?

It is the opinion of the commission that the absolute essentials of such decent conditions of living are (a) respectable lodging; (b) three meals a day; (c) suitable clothing; (d) some provision for recreation, self-improvement and care of health.

It shall consider the condition of the industry and effect thereon of any increase in the minimum wages paid. The board shall then endeavor to determine, as directed by statute (chapter 706, Acts of 1912), the minimum wage suitable for a female employee of ordinary ability in the occupation in question, or for any or all of the branches thereof, and also suitable minimum wages for learners and apprentices, and for minors below the age of eighteen years.

5. *Meetings.*—The board shall meet for organization upon a date fixed by the commission, and may adjourn its deliberations from time to time at its discretion. It shall be appropriate that the initial meetings be of such character as may afford opportunity for the establishment of personal acquaintance and friendly understanding among the members necessary for carrying out the purpose of the board.

6. *Additional information.*—The board may call upon the commission for further investigation, or may request the commission to invite any designated person or persons to confer with the board. All proceedings of the board shall be governed by the chairman, subject to the approval of a majority of the board. Any employer or employee who desires to make a communication to the board concerning facts pertaining to the industry shall be given an opportunity to be heard.

7. *Rates of wages.*—The board shall determine minimum time rates for persons of ordinary ability such as will yield in the course of a normal week the amounts determined by the board, under the provisions of section 4, to be a suitable minimum wage.

An employer who employs persons on piece rates shall be deemed to pay wages at less than the determined minimum rate unless he can show that the piece rates of wages paid yield, under the actual normal conditions of employment to an ordinary worker, at least the same amount of money as the minimum time rate.

The board shall also make such special regulations for learners, apprentices and partly incapacitated workers as it shall deem expedient.

8. *Interpretation of rules.*—Any question upon the construction or interpretation of these regulations shall, in the event of dispute, be referred to the commission for decision.

9. *Report of determinations.*—When a majority of the members of the wage board shall agree upon minimum-wage determinations they shall report such determinations to the commission, together with the reasons therefor and the facts relating thereto, and recommendations for the adjusting of the piecework schedules in the separate establishments to the minimum rate.

10. *Revision of rules.*—These rules are subject to revision by the commission.

The wage board for the brush industry made a preliminary report of its investigations and work on March 17, 1914. This report is of special interest as indicating the principles by which the majority of the board was guided in reaching its determinations, and in slightly condensed form is reproduced from Bulletin No. 3 of the minimum wage commission already referred to.

Preliminary Report (Condensed) of the Massachusetts Brush Makers' Wage Board, March 17, 1914.

SECTION I.—*The needs of employees.*

As laid down by the minimum wage commission, the absolute essentials of decent self-support are:

- (a) Respectable lodging.
- (b) Three meals a day.

(c) Suitable clothing.

(d) Some provision for recreation, self-improvement, and care of health.

In attempting to determine a sum adequate for these purposes for a self-supporting woman employed in a brush-making establishment, the wage board has attempted to apply to present Massachusetts conditions the deductions to be drawn from the mass of statistical material which has been gathered upon this subject. It has made the same kind of inquiry which any individual seeking food, shelter, and lodging is daily making.

Lodging at the lowest level of decency can not be found in Boston for less than \$1.50 per week. A minimum cost for food is at least \$3 a week. If one has the courage to go little beyond keeping warm and dry, it can not be done for less than \$45 a year, or 87 cents a week. For the preservation of health, average expenditures of \$8.75 per year, or 17 cents a week, seem an irreducible minimum. Car fare requires at least 60 cents a week. The total budget so built up is:

	Per week.
Lodging.....	\$1. 50
Food.....	3. 00
Clothing.....	. 87
Car fare.....	. 60
Other.....	. 17
Total.....	6. 14

This figure assumes ideal conditions, and is purely theoretical. It allows nothing for laundry, for reading other than in public libraries, for recreation, for church, for savings, or for insurance of any kind. At least these items must be added:

	Per week.
Laundry.....	\$0. 20
Church.....	. 10
Newspapers (Sunday and every other day).....	. 08
Vacation (one week per year at \$10).....	. 19
Picture show (once in two weeks).....	. 05
Theater (once in two months at 25 cents).....	. 04
Clothing (an addition of \$25 per year).....	. 48
Food.....	. 50
Extras connected with lodging.....	. 50
Total.....	2. 14

The lowest total for human conditions for an individual in Boston is thus seen to be \$8.28. This amount is lower than that of \$8.71, tentatively arrived at by the board early in its proceedings. It makes no allowance for savings or insurance, and is not, therefore, a true living wage. Allowing for variations between individuals, the wage board is convinced that the sum required to keep alive and in health a completely self-supporting woman in Boston is in no case less than \$8, and in many cases may rise to \$9 or more.

SECTION II.—Group methods of living.

Should group methods of living modify this finding from an industrial point of view? The possible methods are:

- (a) Life in families.
- (b) Life in broken families.
- (c) Endowed lodging houses.
- (d) Women rooming together.

We can not hide in our thinking behind the almost universal lack of family accounting. The majority of people who live with others do not know what their living costs them. In determining the cost of self-support for a woman living with her family, allowance must be made for her share of rent, furniture, light, heat, the mother's labor at a fair wage, and the other items shared by all persons in the family. The difference between her expenses and those of the woman living independently is less than is generally supposed. The personal items are the same in each case.

Nor should it be overlooked that the woman living alone is the only person directly involved if her income falls below the minimum line. If a family income falls below, all members of the family are directly involved. The risk is greater. The margin of safety also should be greater in the case of the family. * * *

This situation is emphasized where the case is that of a broken family group. To these people a minimum wage from an individual point of view is far below the minimum from a family point of view.

Where girls room together there may be some saving in room rent. In no other item is there any substantial saving, and there is often an increase of fatigue which overbalances any possible money economy.

SECTION III.—*Subsidies to industry.*

If an industry can not pay for the human endeavor it uses, it is time to ask the effect of such an industry upon public welfare. Who, if anybody, is paying the sum it does not pay toward making up the amount needed to prevent bodily and mental deterioration? The difference between what is necessary and what the industry pays can come only from one of four sources:

(a) Direct charity.

(b) A direct subsidy to the worker through State aid.

(c) An indirect subsidy from industries which do pay living wage.

This is the situation where a worker who receives less than her subsistence costs is partly supported by other workers in the family. The employer of such partially subsidized women and children gets a double advantage over a self-supporting trade. He gets energy derived from food for which his wages do not pay, and he subtracts from the workers of the self-supporting trade energy for which the income derived from them properly should pay. Such an industry is parasitic in its relations to the self-supporting trades about it.

(d) An indirect subsidy taken from the physical and mental capacity of the worker herself.

Where the difference is not made up in money in some one of the ways mentioned, it can only be taken from the health or strength of the worker. Such a process drains the vital strength of the nation, and as a matter of self-protection as well as of humanity can not be permitted by society.

SECTION IV.—*Effects on financial conditions of industry.*

The wage board has tried to answer the question whether the fixing of a minimum wage will increase or decrease the amount of annually renewing income out of which wages, salaries, interest, and profits are made properly possible. It might be held that it was the

duty of the board to accept the fact that the State has established a minimum-wage procedure and go ahead and fix a rate. But putting a rate into effect is more important than making it. The question is clearly a practical one, and businesslike methods must be used.

It is the belief of the board that the added wages which would come to workers through the application of a minimum wage would be a permanent and real addition because of their wealth-creating power, and would be of advantage to employer, employee, and the public.

The minimum wage does not abolish competition for employment or the freedom of the employer's choice. It transfers the emphasis from price to value. The employer is compelled to raise the level of efficiency of his people so as to get the best possible return from fixed conditions. The aggregate efficiency of a nation's business is promoted by insuring that the workpeople employed will be those most efficient, and those unemployed will be almost exclusively the least efficient. By barring an obvious but, from a broad point of view, most undesirable form of relief from the pressure of competition, the minimum wage compels the adoption of methods of lowering costs of production which lead to the elimination of waste and increase of productivity. It puts a premium on business skill, tends to the elimination of the incompetent employer, and stimulates the selection for the nation's business of the most efficient workmen, the best equipped employers, and the most advantageous form of industry.

The results of such experience as there has been in England and elsewhere show that wage boards bring about better organization and better feeling in industry. Employers who pay fair rates have learned that they have as much to gain as employees. As yet there has been no diversion of trade through increased costs of production or of the increase of foreign competition to the extent feared by employers at the outset. The intensive study of conditions made by the board has revealed faults of organization and suggested remedies, and the boards tend more and more to aid in settling disputes outside their particular field and to make efficient and valuable the reserve of casual labor upon which industry must depend in rush times. They also promote technical education. It is notable, in England especially, that initial difficulties thought insurmountable have been overcome, and that the movement advances steadily. * * *

The wage board believes (1) that an industry which does not pay living wages to every one of its employees is getting something for nothing, which is not good business; and (2) that any worker not returning to the industry in efficient work the full equivalent of his wages is getting something for nothing, which is not good business.

Its problem is to set a minimum wage which will secure to the worker from the industry a living chance at the lowest level of decent living, and to set that minimum wage in a manner which will secure to the industry a sure return in work for the wages paid.

SECTION V.—*The brush industry in Massachusetts.*

The information transmitted to the wage board by the minimum wage commission indicates that the industry is not increasing in Massachusetts. It is strongly controlled by competition with other States

and countries and with prison-made goods. Prices of finished product can not be raised immediately to cover an increase in wages. A Massachusetts manufacturer has no particular advantage in purchasing raw materials. Under these circumstances, manufacturers have felt that they were compelled to depend upon cheap labor to make their enterprises successful. The industry has sought to lower its costs by employing many women at low wages.

In some aspects the industry is moving in a vicious circle. Competition has made it feel that its chief method of making profit was in employing low-wage labor. Low pay has been one of the causes, apparently, which has made it difficult to get an adequate supply of regular workers. Higher wages at the lowest level might well assist in meeting competition by increasing and regularizing the labor supply for the industry.

It is noteworthy that in many highly competitive businesses employers have voluntarily established minimum wages far in advance of their sharpest competitors, and no case is on record of their failure to prosper. It is impossible to draw positive conclusions from the testimony as yet available, but the wage board believes that more weight has been given to a low pay roll than should be given it even under highly competitive conditions, and that a higher pay roll with increase of efficiency and increased regularity of work would undoubtedly be beneficial.

Because the brush industry is to-day standing still or declining, is honeycombed by custom with irregularity of employment, is small in aggregate size, and is peculiarly affected by certain competitive conditions, the wage board believes that it is not in condition to pay as high a minimum wage or to bring it as near the actual cost of living as many other industries in the State. It does believe that the establishment of a reasonable minimum will tend to put new life into the industry.

The wage board feels that if it could find some way for insuring greater regularity of work the industry could well afford to pay very considerably higher wages. The wage board has attempted to meet this need in the form of its tentative findings.

SECTION VI.—*The capacity of the worker to earn the minimum.*

The wage board is of the opinion that the minimum wage could be framed in such form as to create a strong tendency to increase the efficiency of the workers in the industry. An increase in the efficiency of the worker must be provided for by two lines of improvement, as follows:

1. By increase in efficiency of business management. In the brush industry there are notable examples of wide-awake methods. There is, however, as in all other industries, continuing opportunity to make improvement in the other factors of production as well as in the labor factor.

2. By improvements in the efficiency of the workers themselves.

The undesirable lowness of earnings depends not so much on the low wages themselves as on the methods of reckoning and paying them. In methods of remuneration there are many things which are burdens both to employer and employee, and employers often make employees suffer overmuch from their own lack of management.

The board feels that the piece rates now in existence in the brush industry are, speaking generally, such rates in themselves and fixed in such a manner as to give the best returns neither to employers nor to employees, and that where a large number of employees are on day pay the concern suffers even more than in piece-rate work from lack of adequate production. The information before the board makes it clear that the piece rates in the industry are fixed on the basis of custom and market-time rates in the industry. This fact—taken together with the fact that information before the board shows that modern methods of cost accounting are substantially absent from the industry—reveals much room for improvement. The board does not urge on the industry elaborate methods of cost accounting; but it does urge, in the interests of both employers and employed, better methods than now exist.

When the employer or his rate setter sets a piece rate he does not in the first instance think of the piece; he thinks of the lot of, say, 100 pieces. He makes a calculation as to how long it ought to take to do the lot—say five hours.

He next takes into consideration the grade of labor that is to do the work and the expectancy of wages (earnings) of that grade of employee for that length of time (say \$0.15 an hour; \$1.50 a day of 10 hours), which will make them require \$0.75 for the lot in order to “make wages.” Finally, he divides that \$0.75 price for the lot by the number of pieces in the lot and sets a piece rate accordingly—in this assumed case, three-fourths of a cent apiece. In other words, a piece rate always has a day-wage basis; and, although the employer may never speak of a standard time for doing the work, nevertheless he plans a time which for him is actually a standard time until it is changed.

Piece rate is in reality a most delicate form of adjustment of wages. It is balanced on the fulcrum of the assumed necessary time. If a mistake has been made about that time so that it tips one way, the employer suffers in accelerated proportion (and presently corrects his error by cutting the rate); or if it tips the other way the employee suffers in an accelerated proportion and can not “make wages.”

In the findings of this report the board recommends that wherever piece rates yield less than time rates, grade for grade, the time rate fixed as the minimum wage must be paid. Under the plan advocated by the board, the employer may discharge and will discharge the low-performance and high-cost workers if he thinks it is their fault that the performance is low. But if he knows that it is by reason of his own mismanagement, such as delay in furnishing material, defective machinery, and the like, he will not do so, because he knows he can not get better workers. He will brace up his management. He is held in check in the exercise of his judgment automatically by the reasons stated above. If the findings should go into effect in full force at once, the employer might discharge the low-performance, high-cost workers on a considerable scale and employ other more efficient workers at higher wages in their places. To give the employee opportunity to meet the standard, the findings of the board contain a recommendation that the minimum wage go into effect gradually, by a series of advances. Under these circumstances

these employees will eat better, live better, and will soon become as efficient as any the employer might get in their places.

In other words, this plan creates, if given time to produce its proper effect, its own source of wage payments, partly by the improvement of the workers on their side when better paid, and partly by the improvements of methods on the side of the employer himself. * * *

We now pass to the proposed application to the "short-time" unemployment evil in its larger aspects of delays in the flow of business, from week to week and month to month, and to the question of voluntary irregular attendance on the part of the workers themselves. Of course the employer will lay his workers off during slack time if he thinks it necessary, and he must be the judge of the necessity. But he will not do so unless really necessary because of the risk of not getting them back again when he wants them. * * *

If an employer should by reason of lack of employment lay off a good many under this rule, it would be a good thing for the workers so laid off in the long run. They will look for employment elsewhere and through spur of necessity will find it; and that would be better than to be dangled along half employed and half living and so, too inert to venture anything, buoyed up by hope of full time soon—a hope that often can not be realized. That it is much better for workers in a part-time industry, getting low earnings largely because they are chronically in a state of half unemployment, to be laid off and have complete unemployment and so be forced to better their condition, was thoroughly demonstrated in the report of the investigation of the hand-loom weavers early in the nineteenth century in England.

The application of the minimum wage to the evil of low earnings by reason of short time is a cure for the evil, whether it arises from lack of continuity and volume of employment offered—unemployment proper—or whether it arises from voluntary irregularity of attendance upon employment which is offered. In neither case, of course, is the employer compelled to keep employees and pay them the minimum wage; he is only required to pay the minimum wage if he keeps them; and it is obvious that so far as excessive unemployment is voluntary on the part of the workers, that will straightway come to an end. The employer will of course strengthen his discipline and discharge excessively irregular workers. That, too, will be an unquestionable gain to the workers as a class in the long run. Voluntary unemployment, so far as it exists beyond the necessities of the workers, can be either only from lack of ambition on the part of the worker because of the low wages or slack discipline on the part of the management. * * *

An employer offers and an employee accepts a piece rate on the basis of the fundamental expectancy on both sides as to the time necessary to do the lot of a certain number of pieces. The earnings per day under piece rate vary inversely with the time actually taken to do the lot or lots. When the expected necessary time is exceeded (and daily earnings are consequently low) it may be either by the fault of the employer or by the fault of the employee. It is not good public policy that the employee should be allowed to gamble on her earnings as to how low they may go under piece rate.

An employer offers and an employee accepts a rate per hour for time wage on the basis of the fundamental expectancy on both

sides as to the normal hours per week of employment. The earnings per week under time wage vary directly with the hours of employment actually furnished and performed. When the hours of time payable in any week fall below the expected normal hours, it may be either by fault of the employer in not furnishing employment or by the fault of the employee in not accepting it. It is not good public policy that an industry should be habitually short time to the extent of falling below the expectancy of normal hours of employment per week and that employees should gamble on how low their earnings may go per week, either by reason of lack of regularity of work furnished or by reason of their own excessive voluntary casual attendance upon work.

The board has felt that it was natural to approach the subject from the standpoint of weekly, monthly, and annual continuous average expenditure. While daily and weekly expenditures by employees vary, the principal items of such expenditures, such as board and lodging, continue pretty uniform, regardless of employment or labor conditions.

On the other hand, it has been borne in mind that the manufacturer has to deal with the wage problem from a cost standpoint, and therefore must try to make the wage fit the work within small periods of time.

The first duty of this board is to strike clearly and decisively at the fundamental root of the evil which it is the intention of the minimum-wage legislation to correct. Any minimum-wage finding which stops with merely naming a minimum hourly rate looks well on paper, but accomplishes no actual result beyond a somewhat pale moral effect. No person can live wisely who tries to plan out his life on anything less than a weekly basis. The goal to aim at is a yearly basis. At the present time, however, an attempt to compel even a minimum weekly wage payable each week without regard to the average earnings over a larger period would be an undue burden on many manufacturers.

The proposed system makes it possible to leave out entirely the question of time in many piece-rate industries which have not as yet time-keeping systems. It will also tend to eliminate many practical problems over which the State will find it difficult to maintain equitable control.

It should be further noted that under a system of computation confined to each week, the actual minimum over any period of time paid to any employee who frequently exceeded in his earnings the minimum rate would compel from the employer a minimum wage exceeding the amount nominally set, and would thus go further than the law intends. It should be borne in mind that a minimum wage is not properly a wage at all, but a retaining fee for labor; its object is, in other words, to see to it that every employee is in such physical and mental condition that he is in good shape to earn a wage.

We have endeavored to make our findings so easy of execution that a minimum of oversight to secure enforcement will be needed.

The rate set by this board, it should be remembered, distinctly relates to the brush industry, its location and its conditions of employment.

First findings.¹

Rule I.—That a minimum salary by 10-week periods be combined with an hourly time-rate or piece-rate system of pay, and workers shall receive each week after 10 weeks of employment, and as long as they are on the pay roll, not less than that minimum salary less proportionate deductions according to the hourly rate for voluntary absence. This minimum salary shall be computed as follows: Each weekly pay day the minimum weekly rate set by this board shall be multiplied by 10, and if the total earnings of the employee during the 10-week period immediately preceding each weekly pay day do not equal that amount the difference shall be paid to her each week.

Rule II.—The minimum weekly rate set by the board governs the hourly rate that may be deducted under Rule I for voluntary absence.

Rule III.—Substandard or handicapped workers may be given permits to work for less than the minimum at the discretion of the board.

Rule IV.—These rates and rules shall apply to all occupations in the industry.

Rule V.—The weekly minimum salary to be paid in accordance with the provisions of Rule I shall be \$7.75.

Rule VI.—No one shall be carried as a learner or apprentice for more than one year. The rate of pay for learners or apprentices shall be 65 per cent of the standard for the first six months and 85 per cent of the standard for the second six months.

Rule VII.—Rule I is not to apply to home work. Piece rates in home work shall be not less than the piece rates in the factory for the same work.

On June 12, 1914, a final report was adopted and submitted to the commission. The determinations of the wage board were as follows:

Determinations.

1. The rate to go into effect at once shall be 15½ cents an hour. At the end of a year's time the rate shall automatically become 18 cents an hour unless in the meantime the representatives of the manufacturers have brought such evidence before the board as to justify the board in recommending to the minimum wage commission a lower rate than an 18-cent rate.

2. The rate for learners and apprentices shall be 65 per cent of the minimum for one year, and the period of apprenticeship shall not be more than one year.

3. These findings shall apply to all minors.

4. The previous report of the brush makers' wage board shall be submitted to the minimum wage commission as the board's idea of the general direction that minimum-wage findings should take.

5. In the case of pieceworkers, if in any case the piece rate yields less than the hourly minimum for time workers, that same hourly minimum must be paid.

To this report the commission gave its tentative approval on June 13, and gave notice to all employers of a public hearing on June 29, 1914. The hearing was well attended, and the only objections made by representatives of employers were dealt with.

The Conclusions of the Commission.

1. The determination of a minimum rate for the ensuing year of 15½ cents per hour met with no objection from employers at the hearing, and the commission has not been advised otherwise of objection to it. It is substantially a matter of agreement between the parties interested, and is approved by the commission.

This determination is perhaps the principal matter now before the commission. It might perhaps be dismissed with no further comment. It seems, however, that one or two observations may be proper as indicating the point of view of the commission in making its finding of approval.

¹ The final determinations and recommendations of the board are incorporated in the commission's statement, p. 10.

Assuming an average week of 50 hours and regular employment, this rate will yield earnings of \$7.75. This is substantially below the sum agreed upon unanimously by the wage board as the lowest upon which a woman can live properly under the existing conditions. It is, however, substantially higher than the rates now in force for many divisions of the industry. As the wage board points out, its business and that of the commission is to fix a low limit for wages in this industry. It makes no effort to fix actual wage rates except to say that no wage for any worker should be lower than that agreed upon. What rates for various processes actually shall be above that limit is left to the parties concerned to be fixed with reference to the character of the work, the skill of the worker, and the other considerations affecting the problem.

The commission in approving this rate as a minimum is moved thereto by the agreement of the parties and by the fact that it is charged with putting into operation a new principle affecting Massachusetts industry. It believes the principle wise and businesslike, but it recognizes that it is one by which this industry is not affected in other States. The statute (sec. 8) and the rules adopted by the commission (Rule II) make the wage board a continuing body. It may be reconvened whenever conditions require, and its continued existence should be an educative and steadying force of great value to the industry. It is wholly possible to correct any error which develops after the present decree shall have had a fair trial. For that reason the commission, while realizing that the needs of the workers as agreed upon by all parties justify a higher minimum, and that the evidence presented to the wage board and to the commission that the industry is not able to pay higher wages and continue to exist in reasonable prosperity is inconclusive and unsatisfying, feels warranted in giving its approval to the rate of 15½ cents per hour to take effect as of August 15, 1914, and to continue for one year. The matter may then be the subject of such action as the situation then existing may warrant.

In making this finding the commission has not overlooked the language with which the wage board's determinations of 15½ cents is accompanied. The commission is of opinion that 18 cents per hour is, under the conditions attending this industry, a sum not more than adequate to supply the necessary cost of living and maintain the worker in health. It is further of opinion that the requirement of section 5 of the statute—that the board and commission shall "take into consideration * * * the financial condition of the industry and the probable effect thereon of any increase in the minimum wages paid"—necessarily imposes upon the employers the burden of coming forward with the evidence that a rate which satisfies the first-mentioned requirement should not be approved because of its effect on the financial condition of the industry. The need of the girl is a factor easily determined within narrow limits. The financial condition of the industry is a matter peculiarly within the knowledge of employers, and without exercising a degree of inquisitorial power which would be pleasing neither to it nor to employers the commission has not been shown, nor does it see how it intelligently can determine, how far its decree should be affected by the condition of the industry other than by depending upon employers to come forward with the facts relating thereto.

In the present instance, aside from certain general statements as to business conditions in the industry, the commission has been presented with little information tending to show that the industry can not pay the 18-cent rate suggested as proper at the end of a suitable period for readjustment and preparation. It has asked for such information.

Should it not be presented, the commission, as at present advised, is of opinion that a rate of 18 cents or its equivalent, figured upon a weekly basis, would require its favorable consideration. That bridge, however, need not now be crossed. In approving the rate of 15½ cents the commission meets the case before it, but it feels that it should express its opinion as to the general policy involved in the problem. Attention is called to the discussion of the principles involved in fixing minimum wages with reference to this industry contained in the report of the wage board (Appendix No. 1). In particular, the plan described upon pages 28 and 29 seemed to present features which merit the careful consideration of employers.

In this connection the commission is of opinion that employers should give their best thought to the problem of eliminating the great irregularity of employment and reducing the striking amount of part time which marks the industry. The business is not one necessarily seasonal in character. Nor does it seem to present any difficulty in this respect that enlightened business thought should not solve. In the judgment of the commission great advantage would result to the industry as a whole, and to the workers engaged in it, if such readjustment could be brought about that those whom the industry does employ should be given regular and full-time employment; and when such employment has been provided at rates which in full time are adequate, employers should insist that those who remain in the industry take full advantage of its opportunities.

2. The rate for learners and apprentices is fixed at 65 per cent of the minimum, and the time of apprenticeship limited to one year. No objection to this determination has been offered by anyone engaged in the industry. It was the judgment of a competent tribunal, and we see no reason to interfere with it. It is therefore approved.

3. Pieceworkers are to be paid at such rates as to put them, so far as their minimum earnings are concerned, on the same basis as the time workers. No doubt many will exceed the minimum. To this determination also no objection was made by any persons engaged in the industry. It is therefore approved.

4. To the determination that the finding shall apply to all minors, objection was made by one employer which requires notice. Before dealing with the objection it should be said that no question is made as to persons between the ages of 18 and 21.

It is said, however, that the determination if approved would make impossible the employment of children between 14 and 18 during school vacations, and the objection is put upon the ground that public policy requires that opportunity for such employment be left open. To the general proposition the commission is prepared to give its assent. It does not, however, seem to the commission that in the present case the objection is well founded. The provision made for the employment of learners and apprentices appears sufficient to take care of any legitimate need in this connection, and it does

not seem wise to encourage an abnormal increase in force during the summer months by use of this class of labor in an industry which now suffers greatly from the evil of part-time employment during large portions of the year. Furthermore, the commission has requested, but has not been furnished, information indicating to what extent the present determination would have the effect suggested by the objectors, and we do not feel that it is wise, without more definite evidence, to disturb the determination of the wage board in this respect. The following decree therefore may be entered:

Decree.

The Minimum Wage Commission of the Commonwealth of Massachusetts, having before it the report of the brush makers' wage board, after public hearing thereupon held June 29, 1914, and for the reasons set forth in its opinion of even date, in accordance with Statutes of 1912, chapter 706, section 6, makes the following decree:

1. The lowest time wage paid to any experienced female employee in the brush industry shall be 15½ cents an hour.

2. The rate for learners and apprentices shall be 65 per cent of the minimum, and the period of apprenticeship shall not be more than one year.

3. These findings shall apply also to all minors.

4. If in any case a piece rate yields less than the minimum time rate, persons employed under such rate shall be paid at least 15½ cents an hour.

5. This decree shall take effect on August 15, 1914, and shall remain in effect until altered by the commission.

MINNESOTA.

The commission in January, 1914, established three wage boards, a mercantile board and a manufacturing board for Minneapolis and St. Paul, and a board covering both industries for Duluth. The Twin Cities mercantile board was composed of 10 representatives of employers, 10 representatives of employees, and 5 representatives of the public. Two of the representatives of employees were working girls, 5 having been originally appointed but 3 declining to serve. The Twin Cities manufacturing board was composed of 6 representatives of employers, 6 of employees, and 5 representatives of the public. One of the representatives of the employees was a working girl. The Duluth board was composed of 30 members, about half of the employers being merchants and half manufacturers.

The advisory wage board for mercantile industries, upon taking up its duties, submitted certain questions in regard to the meaning and application of the law to the attorney general for his opinion. The questions of the advisory board and the replies of the attorney general were as follows:

Whereas it is not entirely clear what powers and duties the commission or ourselves as an advisory board have or by what methods we shall proceed in the matter of fixing a living wage, and it is advisable, in order that time may be saved and we may do our work speedily and to the best advantage, that we be advised upon those matters at once; now, therefore, be it

Resolved, That we request the commission to submit the following questions to the attorney general for his answer in writing so that we may have them before us for our guidance in our work.

1. Must not the commission fix a minimum wage in the "occupation" for the entire State at one time? It is claimed by some that the action of the commission must be with reference to and for the entire State, though in fixing the actual minimum it may vary the minimum in different parts of the State; but though the minimum may differ in various parts of the State they must all be fixed at the same time and as part of the same investigation and proceeding.—Answer. No.

In other words, can the commission investigate the minimum wage in any "occupation" and act upon it within a district less in extent than the entire State?—Answer. Yes.

(In regard to the first two questions asked: "Must not the commission fix a minimum wage in the 'occupation' for the entire State at one time?" In other words, "Can the commission investigate the minimum wage in any 'occupation' and act upon it within a district less in extent than the entire State?" These questions were taken up in conference by the attorney general and the six assistants, and it was the unanimous opinion of the department that the acts of the commission must be State wide and it must be all done at one time.)

2. Section 5 provides that the commission shall establish a minimum rate of wages for an "occupation" after careful investigation. The commission is of opinion the wages paid to one-sixth or more of the women or minors employed therein are less than living wages. Can the commission fix a minimum wage unless upon such investigation they find that at least one-sixth of the women or minors employed in the "occupation" within the State are receiving less than living wages?—Answer. No.

Must they find that one-sixth or more of the women are receiving less than living wages before they can fix minimum wages for women, and that one-sixth or more of the minors employed in the "occupation" throughout the State are receiving less than living wages before they can fix the minimum wage for minors?—Answer. No.

Or, can they consider women and minors as belonging to the same class and fix minimum wages for each if they find one-sixth of the aggregate number of women and minors are receiving less than living wages?—Answer. Yes.

Must the commission fix a minimum for both women and minors in the "occupation" if they fix a minimum for either? Can the minimum fixed for women differ in amount from that fixed for minors in the same "occupation" and if so, on what basis must the difference be fixed?—Answer. Yes; respective cost of living of the two.

Can the commission fix a different minimum for male and female minors in the same "occupation"?—Answer. No.

3. What is an apprentice or learner? (This question is answered by par. 6 of sec. 20 of the act itself.) By what rule shall the commission determine what is an apprentice and what is a learner? (See above answer.)

Must the minimum for apprentices be the same as for ordinary workers?—Answer. Yes. (See par. 7, sec. 20, of the law.) If not, on what basis must the commission fix the minimum for apprentices if the cost of living is to determine the wage?

4. Must the commission make the minimum apply to all classes without regard to the necessity of the class or of the individual in the class?—Answer. That depends upon facts and applies to all as defined in paragraph 8, section 20, of the law.

By what rule, if any, is the commission to determine what is necessary to maintain the worker in health, and what are the necessary comforts and conditions of reasonable life?—Answer. This is by ascertaining the minimum cost of living.

Can the minimum wage be varied or fixed, having in mind the ability of the employer to pay the wage, and having in mind the necessity of the employee to contribute to the support of a family or others dependent?—Answer. The attorney general concluded the commission had nothing to do with this matter.

Must not the wage be fixed solely with reference to the actual needs of the employee of ordinary ability for a decent livelihood for the employee alone, without allowing anything to enable the employee to contribute to the support of a dependent, and with-

out allowing anything for education or amusement or for clothing or housing beyond that which will afford a minimum of comfort and amusement? (See subdivision 1, par. 1, sec. 20, of the law.)

Can the commission in fixing a minimum wage allow anything off or in reduction because of the advantages, educational or otherwise, which the employee gets from the particular employment?—Answer. Probably not.

5. In case the commission should promulgate a wage rate which was unsatisfactory to some employer or employers, could the employer so objecting be compelled to comply?—Answer. Yes; I think that the mere fact that the rate was not satisfactory to some employer would not excuse him from complying.

Would a rate fixed by the commission in the manner provided by the Minnesota minimum wage statute be enforceable?—Answer. Yes.

May we not expect that the court would hold it unenforceable?—Answer. No; the right to rule upon this is left for the courts.

Additional questions.

1. The first point is, Can a minimum wage per week be divided into half time, time by the day, or time by the hour?—Answer. I think "yes."

2. Can an employer offset against a minimum wage the value of instruction given to an apprentice or learner?—Answer. No.

3. When a business is so conducted that the branches of an ordinary trade are exercised within the business plant, does the minimum wage in that business control all employees, or does the minimum wage apply in the occupations which are grouped together in such business?—Answer. To the group.

Preliminary investigations of wages, cost and manner of living, and amount of time lost during the year had been made by the commission. The wage boards, however, decided that further investigation was desirable, and subcommittees were appointed for this purpose. Schedules were drawn up and sent out to employers. Schedules to be filled out by individual employees were also sent to employers, to be distributed by them to the employees. The final recommendations of the wage boards were as follows:

Mercantile board, \$8.65 per week.

Manufacturing board, \$8.75 per week.

Duluth board, \$8.50 per week.

After the receipt of the reports of the wage boards the commission held two public hearings. Its determinations, based upon the recommendations of the wage boards and its public hearings, caused it to reject the figures recommended and to fix rates for two classes of cities. In cities of the first class, the Twin Cities, the minimum wage was fixed at \$9 a week in mercantile and at \$8.75 in manufacturing; in cities of the second, third, and fourth classes, as Duluth and Winona, the minimum for mercantile occupations was fixed at \$8.50 and in manufacturing at \$8.25 per week. In smaller communities the minimum was fixed at \$8 a week for both mercantile and manufacturing occupations. All of the determinations were issued October 23, 1914, to become effective 30 days thereafter. According to a statement of the commission on the day the wage orders were to have become effective, an injunction was issued by the Ramsey County

District Court restraining the commission from enforcing the wage orders or performing any official acts. The case is now pending before the State supreme court.

The wage orders of the Minnesota commission as issued are given below:

ORDER No. 1, OCTOBER 23, 1914.

TAKE NOTICE.—That pursuant to the authority in it vested by chapter 547, General Laws of Minnesota for 1913, and being of the opinion that the wages paid to more than one-sixth of the women employed in each of the occupations hereinafter named in the State of Minnesota are less than living wages, and having made due investigation and having determined the minimum wages sufficient for living wages for women and minors of ordinary ability to be nine dollars (\$9) per week, in any mercantile, office, waitress, or hairdressing occupation, in any city of the first class in the State of Minnesota.

Now therefore it is ordered that:

No employer, whether an individual, a partnership or a corporation, shall employ any woman or minor of ordinary ability in any mercantile, office, waitress or hairdressing occupation, in any city of the first class in the State of Minnesota, at a weekly wage rate of less than nine dollars (\$9).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

Each employer affected by the above order shall post at least one copy of said order in a conspicuous place in each workroom in which affected workers are employed in his establishment or work place.

ORDER No. 2, OCTOBER 23, 1914.

No employer, whether an individual, a partnership or a corporation, shall employ any woman or minor of ordinary ability in any mercantile, office, waitress or hairdressing occupation, in any city of the second, third and fourth class in the State of Minnesota, at a weekly wage rate of less than eight dollars and fifty cents (\$8.50).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

ORDER No. 3, OCTOBER 23, 1914.

No employer, whether an individual, a partnership or a corporation, shall employ any woman or minor of ordinary ability in any mercantile, office, waitress or hairdressing occupation, in the State of Minnesota, outside of cities of the first, second, third and fourth classes, at a weekly wage rate of less than eight dollars (\$8).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

ORDER No. 4, OCTOBER 23, 1914.

No employer, whether an individual, a partnership or a corporation, shall employ any woman or minor of ordinary ability in any manufacturing, mechanical, telephone, telegraph, laundry, dyeing, dry-cleaning, lunch-room, restaurant or hotel occupation, in any city of the first class in the State of Minnesota, at a weekly wage rate of less than eight dollars and seventy-five cents (\$8.75).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

ORDER No. 5, OCTOBER 23, 1914.

No employer, whether an individual, a partnership or a corporation, shall employ any woman or minor of ordinary ability in any manufacturing, mechanical telephone, telegraph, laundry, dyeing, dry-cleaning, lunch-room, restaurant or hotel occupation, in any city of the second, third and fourth class in the State of Minnesota, at a weekly wage rate of less than eight dollars and twenty-five cents (\$8.25).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

ORDER No. 6, OCTOBER 23, 1914.

No employer, whether an individual a partnership or a corporation, shall employ any woman or minor of ordinary ability in any manufacturing, mechanical, telephone, telegraph, laundry, dyeing, dry-cleaning, lunch-room, restaurant or hotel occupation, in the State of Minnesota, outside of cities of the first, second, third and fourth classes, at a weekly wage rate of less than eight dollars (\$8).

This order does not apply to learners and apprentices.

This order shall become effective thirty (30) days from and after the date hereof.

NEBRASKA.

While Nebraska enacted a minimum-wage law in 1913, to become effective July 17 of that year, no appropriation was made for carrying out the purposes of the act. In consequence, no real work has yet been done. The matter is reported as again under discussion before the legislature, with the real application of the act dependent upon action by that body.

OREGON.

The first biennial report of the Oregon Industrial Welfare Commission,¹ submitted January 1, 1915, gives an account of the work of the commission from June 3, 1913, the date when the law came into effect. Prior to that date the commissioners had been named and thus were able to meet and organize on June 4. The report does not discuss the problems with which the commission had to deal in endeavoring to put the law into operation nor the effects which have resulted from the enforcement of its orders. The report is here given substantially in full.

The commission began immediately to formulate plans for gathering information on the wages, hours, and general conditions of women and minor workers before it called formal conferences. Informal hearings were held with employers and employees from the retail store, manufacturing, fruit canning, laundry, restaurant, telephone, and telegraph industries. In all, 16 such hearings have been held. Besides these hearings, special data not ascertainable at the hearings were gathered by the secretary.

The first important decision which the commission made was to regulate the wages and hours of minor girls before regulating those of adults. As the commission is empowered (ch. 62, sec. 11, General Laws of 1913) to make rulings on minors without recommendations from a formal conference, a public hearing on the minimum wages and maximum hours for girls between the ages of 16 and 18 years was held in the office of the commission on August 5, 1913. The questions submitted by the commission at this hearing were:

1. What are the maximum hours per day which girls between the ages of 16 and 18 years should be employed?
2. What is the latest hour at night at which girls between the ages of 16 and 18 years should be employed?
3. What should be the minimum wage for girls between the ages of 16 and 18 years?

¹ First Biennial Report of the Industrial Welfare Commission of the State of Oregon, 1913-14. Salem, 1915. 15 pages.

The rulings which the commission issued as a result of the hearing are known as Industrial Welfare Commission Order 1.

I. W. C. ORDER No. 1, AUGUST 5, 1913.

GENTLEMEN:

TAKE NOTICE.—That pursuant to the authority in it vested by the general laws of the State of Oregon (Laws 1913, ch. 62, pp. 92-99), and in accordance with the determination by it to-day duly made and rendered:

The Industrial Welfare Commission of the State of Oregon hereby orders that:

1. No girl under the age of 18 years shall be employed in any manufacturing or mercantile establishment, millinery, dressmaking, or hairdressing shop, laundry, hotel or restaurant, telephone or telegraph establishment, or office in the State of Oregon more than 8 hours and 20 minutes during any one day or more than 50 hours in any one week.

2. No girl under the age of 18 shall be employed in any one of the above-named occupations after the hour of 6 o'clock p. m.

3. A minimum wage of \$1 a day shall be established for girls between the ages of 16 and 18 years, working in the above-mentioned occupations, except as otherwise arranged by the commission in the cases of apprentices and learners.¹

Said order shall become effective from and after October 4, 1913.

After such order is effective, it shall be unlawful for any employer in the State of Oregon affected thereby to fail to observe and comply therewith, and any person who violates said order shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail for not less than 10 days nor more than 3 months, or by both such fine and imprisonment, in the discretion of the court.

EDWIN V. O'HARA, *Chairman*,
BERTHA MOORES,
AMEDEE M. SMITH,

Industrial Welfare Commission of the State of Oregon.

Attest:

CAROLINE J. GLEASON, *Secretary*.

NOTICE.—Your attention is respectfully called to section 9 of chapter 62, General Laws of Oregon, 1913, which provides that every employer affected by this order shall keep a copy posted in a conspicuous place in each room in his establishment in which women workers work.

Meanwhile, as a result of the informal hearings, the commission had called two formal conferences, one on the employment of women in manufacturing establishments in Portland, the other on the employment of women in retail stores in Portland. The conference on factories held its first meeting on July 22, 1913. The members of this conference were:

Representing the public.—Mr. W. B. Ayer, Mr. Chas. McGonigle, Mrs. Elmer B. Colwell.

Representing the employees.—Mrs. N. A. Fallman, Miss Anna Bolda, Mrs. L. Gee.

Representing the employers.—Mr. J. W. Vogan, of the Modern Confectionery Co.; Mr. Everett Ames, of the Ames, Harris, Neville Bag Co.; Mr. A. T. Huggins, of the Fleishner & Mayer Co.

The commission submitted the following questions to this conference for consideration:

(1) What is the sum required a week to maintain a self-supporting woman in frugal but decent conditions of living in Portland? The absolutely essential elements of such decent conditions are: (a) Respectable lodging; (b) three meals a day; (c) clothing according to the standard demanded by the position such employee fills; (d) some provisions for recreation, care of health, and self-improvement.

(2) What are the maximum daily hours of work in manufacturing establishments which are consistent with the health and efficiency of the women employees?

(3) What length of lunch period is demanded by the hygienic needs of women workers in factories?

¹ See order of Aug. 31, 1914.

The recommendations received from this conference, which were presented for a public hearing, follow:

Recommendations of the Conference on Factories in Portland.

In establishing a minimum wage for women workers in factories, consideration should be given to the character of the occupation and to the permanence of the employment; consequently each industry should be considered by itself. It is apparent, however, that there must be a minimum below which it is unwise for society as a whole to permit its workers to be employed.

In the establishment of such a minimum, general in its application, consideration must also be given to industry as it exists and care must be taken that injustice is not inflicted in an effort to remedy abuses that have long existed.

With a full realization of the importance and far-reaching influence of our decision, we recommend:

"First. That the daily hours of work be limited to nine hours a day or 54 hours a week.

"Second. A standard minimum of \$8.64 a week in manufacturing establishments of Portland, any lesser amount being inadequate to supply the necessary cost of living to women workers and to maintain them in health.

"Third. That the length of the lunch period be not less than three-quarters of an hour.

"The above recommendations are intended to apply to the regular women workers and do not cover the minimum wages for learners and apprentices. Conditions of occupation and the time required to become proficient are so varied in different industries that we recommend that the commission itself gather information covering all occupations and submit all such information and evidence to a conference created for the purpose of considering same. Satisfied that such course is the only satisfactory method of arriving at an equitable settlement of the period for learners and apprentices we make no specific recommendation covering industries assigned to us for consideration, but do recommend that the minimum wage for such learners and apprentices in manufacturing establishments of Portland be fixed at \$1 a day."

A public hearing was held on these recommendations in the Portland Public Library, on September 9, 1913, at 8. p. m. The rulings of the commission on the wages and hours of adult women employees, paid by the time rate of payment, in the factories in Portland, are as follows:

I. W. C. ORDER No. 2, SEPTEMBER 10, 1913.

No person, firm, corporation, or association owning or operating any manufacturing establishment in the city of Portland, Oreg., shall employ any woman in said establishment for more than 9 hours a day, or 54 hours a week; or fix, allow, or permit for any woman employee in said establishment a noon lunch period of less than 45 minutes in length; or employ any experienced adult woman worker, paid by time rates of payment, in said establishment at a weekly wage of less than \$8.64, any lesser amount being hereby declared inadequate to supply the necessary cost of living to such women factory workers, and to maintain them in health.

Said order shall become effective from and after November 10, 1913.

The mercantile conference held its first meeting on July 21, 1913. The members of this conference were:

Representing the public.—Mr. T. D. Honeyman, Mrs. Henry R. Talbot, Miss Ruth Catlin.

Representing the employees.—Miss Helen Dinneen, Miss Gladys Rogers, Mrs. J. W. Mackey.

Representing the employers.—Mr. I. N. Lipman, Mr. Thos. Roberts, sr., Mr. Wm. Woodard.

The following questions were submitted to the conference:

(1) What is the sum required per week to maintain in frugal but decent conditions of living a self-supporting woman employed in a mercantile establishment in Portland? The absolutely essential elements of such decent conditions of living are:

(a) respectable lodging; (b) three meals a day; (c) clothing according to the standard demanded by position such employee fills; (d) some provisions for recreation, self-improvement, and care of health.

(2) What are maximum hours of work in mercantile establishments consistent with the health and efficiency of women employees?

(3) Is the employment of women at nightwork in mercantile establishments reasonable and consistent with their welfare?

On August 20, 1913, the conference sent the following recommendations to the commission:

Report of the Conference on the Wages, Hours, and Conditions of Work of Women in Mercantile Establishments in Portland.

To the Industrial Welfare Commission of the State of Oregon:

The members of the mercantile conference called by the commission for the purpose of deciding what is the minimum cost of decent, frugal living, what should be the maximum hours of a day's work for adult female clerks employed in mercantile establishments in Portland, and whether nightwork in such establishments is reasonable and consistent with their welfare, wish to report to the commission that they have seriously considered the above questions and wish to make the following recommendations to the commission:

(1) That a minimum wage of \$9.25 a week be established for adult women clerks who are not apprentices, in the mercantile stores of Portland.

(2) That the maximum hours of work for one day be fixed at 8 hours and 20 minutes, and for one week at 50 hours.

(3) That 6 o'clock p. m. be fixed as the latest hour at which any woman shall be employed on any day of the year in a mercantile establishment, since any later hour is inconsistent and unreasonable with the welfare of women workers.

A public hearing on these recommendations was held on September 23, 1913, at 8 p. m., in the Portland Public Library. After considering the information presented, the commission issued the following rulings:

I. W. C. ORDER NO. 3, SEPTEMBER 23, 1913.

No person, firm, or corporation owning or conducting any mercantile establishment in the city of Portland, Oreg., shall pay to any experienced adult woman worker a wage less than \$9.25 a week. Nor shall any such person, firm, or corporation owning or conducting any mercantile establishment in the city of Portland, Oreg., employ any woman worker in such mercantile establishment more than 8 hours and 20 minutes in any day, and 50 hours in any week, or after the hour of 6 o'clock in the afternoon of any day.

Said order shall become effective from and after November 23, 1913.

On September 3 a conference on the wages and hours of women employees in offices in Portland was organized. This conference was composed of Mrs. W. L. Brewster, Mr. Fred Strong, Mr. Wm. A. Marshall, representing the public; Miss Ethel Winn, Miss Edna Carmody, Miss Irene Armstrong, representing the employees; Mr. Franklin T. Griffith, Mr. J. B. Kerr, Mr. A. J. Wellman, representing the employers.

The following questions were considered by them:

1. What sum is necessary to supply a decent and healthful subsistence to a self-supporting adult woman engaged in office work in the State of Oregon?

2. What is the maximum number of hours that such a woman may be so employed without injury to her health?

The conference answered these questions by recommending: First, that a minimum wage of \$40 a month be paid to adult experienced women engaged in office work; second, that 51 hours a week be the maximum number of hours which a woman engaged in office work

might be employed. There was no recommendation for maximum daily hours.

The public hearing on these recommendations was held December 2, 1913, in the Portland Public Library at 8 p. m. The commission then issued the following rulings:

I. W. C. ORDER No. 4, DECEMBER 3, 1913.

1. No person, firm, corporation, or association shall employ any experienced, adult woman in any office, or at office work, in the city of Portland for more than 51 hours in any week, nor at a wage rate of less than \$40 a month.

2. The following classes of work are included under this ruling as office work: Stenographers, bookkeepers, typists, billing clerks, filing clerks, cashiers (moving-picture theaters, restaurants, amusement parks, ice-cream stands, etc.), checkers, invoicers, comptometer operators, auditors, and all kinds of clerical work.

Said order shall become effective from and after February 2, 1914.

Pending special investigations and rulings on the different industries located outside of the city of Portland, and wishing to establish maximum hours and minimum wages which would put all of the industries in the small towns of the State on an equal footing, the commission organized a conference familiarly known as the "State-wide" conference. The representatives on this were:

Representing the public.—Mrs. Sarah Evans, Mr. D. Solis Cohen, Mr. R. A. Booth.

Representing the employers.—Mr. Emery Olmstead, Mr. Thomas Kay, Mr. Thos. Roberts, sr.

Representing the employees.—Mrs. L. Gee, Mrs. Steve King, Miss Marie Burton.

The industries which they were asked to consider were those in Portland not already regulated by previous rulings, and all industries in the State at large, outside of Portland, which had women in their employ. The conference was instructed that the wages recommended would be preliminary to special conferences which the commission intended to call eventually for industries outside of Portland, as well as those in Portland. The questions submitted to this conference were:

(1) What is the sum required a week to maintain a self-supporting woman in frugal but decent conditions of living?

(2) What are the maximum daily hours of work which are consistent with the health and efficiency of women employees?

(3) Do you not think that a maximum six-day week should be recommended for all women employees?

(4) What should be the maximum time of employment required before an inexperienced woman worker is entitled to receive the minimum wage?

(5) Is nightwork reasonable and consistent with the health and efficiency of female employees?

After due consideration, the conference sent the following recommendations to the commission:

Report of the State-wide Conference for All Industries in the State of Oregon.

To the Industrial Welfare Commission of the State of Oregon:

The members of the conference appointed by your honorable body for the purpose of recommending wages and hours for all industries in the State of Oregon not heretofore ruled upon by the commission, respectfully report that they have given due attention to the questions propounded, and respectfully submit the following as their answers thereto, all of the conclusions herein contained being the unanimous sense of the members of the conference present at the time when the matters were finally considered.

Answer to question 1. We deem that the sum required per week to maintain a self-supporting woman in frugal but decent conditions of living as an absolute minimum is \$8.25.

Answer to question 2. The maximum daily hours of work which are consistent with the health and efficiency of women employees should not exceed 54 a week.

Answer to question 3. It was the opinion of the conference that the answer to question 2 would of itself necessarily affect the answer to question 3.

Answer to question 4. The conference suggested that the maximum time of employment before an inexperienced woman worker should be entitled to receive the minimum wage should not exceed one year, and further suggests that in making the recommendation the conference does not mean to indicate that an inexperienced woman should necessarily work one year before receiving the minimum wage, but should be put upon the list of experienced workers just as soon as her efficiency becomes apparent; for such inexperienced workers the conference recommends a minimum wage of \$6 a week.

Answer to Question 5. The conference does not believe that nightwork is consistent with the health and efficiency of female employees, but in view of the present industrial conditions throughout the State of Oregon it recommends the hour of 8.30 o'clock p. m. as the latest hour at which women should be employed in mercantile, manufacturing, and laundry industries, but that this hour of dismissal should not apply to telephone and telegraph companies, confectionery establishments, restaurants, and hotels.

A public hearing on these recommendations was called for December 9, 1913. The rulings which were issued after the hearings are as follows:

I. W. C. ORDER No. 5, DECEMBER 9, 1913.

(1) No person, firm, or corporation shall employ any experienced, adult woman in any industry in the State of Oregon, paid by time rate of payment, at a weekly wage rate of less than \$8.25 a week, any lesser amount being hereby declared inadequate to supply the necessary cost of living to such women workers and to maintain them in health.

(2) Nor shall any such person, firm, or corporation employ women in any industry in the State of Oregon for more than 54 hours a week.

(3) Nor shall any such person, firm, or corporation pay inexperienced, adult women workers, employed by time rate of payment, at a rate of wages less than \$6 a week. And the maximum length of time such workers may be considered inexperienced in any industry shall not exceed one year.¹

(4) No person, firm, or corporation owning or conducting any mercantile, manufacturing, or laundry establishment in the State of Oregon shall employ women workers in such establishment later than the hour of 8.30 o'clock p. m. of any day. This hour of dismissal does not apply to telephone and telegraph companies, confectionery establishments, restaurants, and hotels.

Said order shall become effective from and after February 7, 1914.

Under date of August 31, 1914, the commission issued the following order (but not as a numbered order) authorizing employment for a preapprenticeship period at a special lower rate in the millinery and dressmaking trades.

PORTLAND, OREG., *August 31, 1914.*

TO THE MILLINERS AND DRESSMAKERS OF THE STATE OF OREGON:

The industrial welfare commission on August 28 decided, in view of the circumstances surrounding the apprenticeship conditions in the millinery and dressmaking trades, to permit a preapprenticeship period of one month to women and girls who wish to learn either of these trades. As this month is given that the ability of the learners may be tested and their fitness for the trade discovered they may be engaged for a wage rate of less than \$6 a week, but after the end of the 30 days' period the apprentice must be paid at least \$6 a week. The regular apprenticeship period of 12 months as allowed by I. W. C. Order No. 5, will date from the end of the month's trial.

This preapprenticeship period of 30 days will be allowed only to those women and girls who have had no previous experience at dressmaking or millinery. Every learner who is taken on under this regulation must have a special permit from this office before she can begin work. A duplicate of this permit will be sent to the employer, which duplicate must be returned with the original when the preapprenticeship time

¹ See order of Aug. 31, 1914.

is completed. Those women who have had slight experience at either of the trades, but who have not had a full year, must be employed as regular apprentices at \$6 a week and will not receive a permit for a trial month.

INDUSTRIAL WELFARE COMMISSION,
———, *Secretary*.

Because of the seasonal character of the fruit and vegetable canning industry and the large number of women and children employed, a special conference on this industry was organized September 16, 1914. The representatives on this conference were:

Representing the public.—Mrs. A. M. Wilson, Mr. J. C. English, Mr. A. M. Churchill.

Representing the employees.—Mrs. L. E. Daniels, Mrs. Wm. Addis, Miss Rose Harrington.

Representing the employers.—Mr. J. J. Stangel, Woodburn; Mr. W. G. Allen, Salem; Mr. J. O. Holt, Eugene.

The commission submitted the following subjects for consideration:

(1) A system of standardizing or indicating box weights where employees work by the box.

(2) A standardization of the daily time and piece work checks.

(3) The adjustment of piece rates to the minimum-wage rate already established:

(a) For the different grades of the same kind of fruit.

(b) For determining the percentage of workers who may be classified as learners.

(4) The question of the status of minors in canneries.

(5) Proper height of tables and stools.

The recommendations of the conference were as follows:

(1) Except as herein below set forth under paragraph 2, no person, firm, corporation, or association shall employ any experienced adult woman in any cannery or other establishment for the canning, drying, or preserving of fruit, vegetables, fish, or other similar products in the State of Oregon, whether paid by time or piece rate of payment, at a weekly wage rate of less than \$8.25 a week, nor in the city of Portland at a weekly wage rate of less than \$8.64, any lesser amount being hereby declared inadequate to supply the necessary cost of living to such women workers, and to maintain them in health. Where piece rates of payment are employed they shall be so adjusted as to conform to this regulation.

(2) Not to exceed 25 per cent of the adult women employed in any such establishment (cannery, etc.) may be classed, if inexperienced, as "learners and apprentices," or if slow or infirm, as "physically defective or crippled by age or otherwise," and may receive less than said minimum wage above named, but in no case shall "learners and apprentices" receive less than \$6 a week.

(3) In case action for unpaid wages is brought in any court by any such adult woman employee, it shall be sufficient that the plaintiff shall establish the time during which she was employed, whereupon it shall be presumed that she is entitled to the minimum wage provided in paragraph 1 hereof for the period of such employment. And if an employer, in defense, under paragraph 2 hereof, shall seek to show that said worker was inexperienced, slow, or infirm, it shall be incumbent upon him to establish that not to exceed 25 per cent of his adult women employees were thus classed and paid during the period covered by such action.

(4) Where employment is for fractional portions of a week a minimum wage per hour shall be paid, to be arrived at by dividing the weekly minimum wage applicable by the maximum number of hours of employment permitted by law in the establishment in question, in no case more than 54 hours.

(5) No woman shall be employed in any such establishment (cannery, etc.) more than 54 hours a week; but for not more than four weeks each year adult women may be employed more than 10 hours a day, provided that for all time of employment exceeding 54 hours a week and less than said 60 hours a week wages shall be paid at a rate exceeding the regular minimum wage paid in such establishment, whether by piece or time rate, by not less than 50 per cent.

(6) Whenever, at the end of any day or other unit of working time, any employer in such industry shall take possession of the token, card, record, or receipt for piecework of any female employee, he shall in turn leave with or give to her either a duplicate or copy of same or some similar form of token, card, record, or receipt from which all sums to which she is entitled and hours during which she has been employed can be readily computed.

A public hearing on these recommendations was held in the Portland Public Library on December 17, 1914.

The question of the length and the wage of the apprenticeship period in the mercantile, factory, and laundry industries, which had been under investigation for some time, was submitted to a conference on October 21, 1914. Subcommittees of this conference are still engaged in investigating the question in all its bearings.

Besides minor investigations which the commission has carried on without interruption, through its secretary, two more extensive inquiries have been made during the year 1914. The first one was concerned with the conditions of work of female employees in the fruit and vegetable canneries in the State, and the second with the laundries of Portland. A report on the findings of the laundry inquiry has been published.¹ During the 18 months which have elapsed since the commission was organized it has met 73 times; 40 of these meetings have been formal business sessions, 16 have been informal hearings, and the remainder have been at conferences and public hearings.

Enforcement of the Law.

All complaints of violations of the law which have been reported to the office of the commission have been referred to the State labor commissioner, who has the enforcement of the rulings. The industrial welfare commission has endeavored to cooperate in every way with the State labor commissioner and his deputies, so that complete harmony exists between the two officers.

Eight permits have been issued to slow, infirm, or crippled adult workers, as permitted by the law (ch. 62, sec. 10), to work for less than the minimum wage provided for experienced adult workers. The industries, the number in each, and the cause for which the permits were issued is given herewith:

Industry.	Location.	No.	Reason for issuing.
Paper-box factory.....	Portland.....	1	1 aged and slow.
Mercantile store.....	.....do.....	2	1 abnormally slow worker; 1 deafness.
Fruit cannery.....	.....do.....	1	1 aged, slow, and infirm.
Rug factory.....	.....do.....	1	1 slow from illness, past middle age.
Laundry.....	.....do.....	2	1 crippled hand; 1 aged and slow.
Do.....	Eugene.....	1	1 aged and slow.

Legal Defense of the Act.

On October 14, 1913, suit was brought by Mr. F. C. Stettler against the industrial welfare commission to restrain it from carrying out the provisions of the act on the ground that it was unconstitutional. The complaint was based on the provisions of I. W. C. Order No. 2, which governs the employment of women in factories in Portland, and provides for a nine-hour day or 54-hour week, a minimum wage of \$8.64 a week for experienced adult workers, and a minimum of 45 minutes for the lunch period. Attorney General Crawford had charge of the defense for the commission, but was ably assisted by Mr. Dan J. Malarky, Mr. E. B. Seabrook, and Mr. J. N. Teal, who offered their services to the commission gratuitously. Mr. Teal drew up a brief defending the provision of the law which forbids

¹ Report of the Industrial Welfare Commission of the State of Oregon on the Power Laundries in Portland, 1914.

appeal from decisions of the commission in matters of fact. Mr. Malarky also presented a brief and took part with the attorney general in the pleadings before both the circuit and State supreme courts.

On November 7, 1913, Judge Cleeton, of the circuit court, declared the law constitutional and refused to grant an injunction against the commission. An appeal was taken to the State supreme court, where the hearing was given on February 9, 1914. For the hearing before the State supreme court Mr. Louis D. Brandeis, of Boston, and Miss Josephine Goldmark, publication secretary of the National Consumers' League, submitted a brief showing the benefits of minimum-wage legislation. On March 17, the supreme court handed down a decision upholding the constitutionality of the law.

Thereupon Miss Elmira Simpson, an employee of Mr. F. C. Stettler, brought suit against the commission on the ground that its rulings would deprive her of the right to work. The law was again upheld, both in the circuit and the State supreme courts. Both cases were appealed to the United States Supreme Court, where the hearing was held on December 17, 1914. Attorney General Crawford and Mr. Louis Brandeis appeared for the commission. The decision of this court has not yet (March 17, 1914) been rendered.

UTAH.

The Utah minimum-wage law is peculiar in that it fixes directly the minimum rates to be paid for experienced adult females, for adult learners and apprentices, and for minors. The administration of the law is placed upon the commissioner of immigration, labor, and statistics. The law became effective May 13, 1913, and the following statement under date of January 20, 1914, from Commissioner Haines, is of particular interest:

Our office has investigated some two hundred or more cases of alleged violations of the minimum-wage law since May 13, 1913, which have had any merit and a number that had not. We knew that it was the prime object of the lawmakers to secure for the girls and women affected an increase of wages and in enforcing the law we have always endeavored to look after the interests of the employees first. For this reason, where we find violations, we first give the employers an opportunity to make good to their employees any shortage of wages between what they had been paying and what they were legally required to pay. In some cases, we have secured to a single employee as high as \$57 in back wages. The employers preferred to pay this money rather than stand trial with the liability of paying a heavy fine and costs of prosecution, besides the ignominy of being cheap men. In the above manner, we have collected over \$6,000 in back pay to employees and up to the present time we have had to bring four prosecutions, three of which we have won and one is still pending.¹

Writing late in 1913, the same commissioner said:

The principal businesses affected by the law are the mercantile, candy, knitting, paper-box and overall factories, the woolen mills, laundries, millineries, hotels and telephone companies.

¹ Irene Osgood Andrews, Minimum-wage legislation, Appendix III of the Third Report of the New York State Factory Investigating Commission, p. 208.

Of the employees under 18 years of age, constituting about 6 per cent of the 11,500, a majority were employed as cash girls and wrappers in the department stores and received about \$4 per week, a few less. The minimum wage raised the wages of this class to \$4.50 per week. A number of the department stores supplanted cash girls with cash boys whom they pay \$4 a week or \$18 per month. Many millinery stores that were paying girl apprentices from \$2.50 to \$5 per week also weeded out those who were the least proficient. In the knitting, candy, paper-box, and overall factories, and woolen mills where the piece system is in vogue, a few girls were discharged who could not reach the minimum wage in their respective classes named in our law. This number, however, was not over 3 per cent of the whole number employed therein.

In the inexperienced adult class, those women over 18 years of age with less than one year's experience as salesladies or as apprentices in millinery stores and factories, were affected to a considerable extent. The law requires that this class shall be paid not less than 90 cents per day. Many within this classification were drawing about the same wage as was paid inexperienced girls who were under 18 years of age. In some cases, the older girls in the 90 cents per day class were no better salesladies than their younger sisters. Of this class, constituting 10 per cent of the female employees in our State, as stated above, the wages of about 3 per cent were raised to meet the minimum wage.

While the law did not become effective until May 13, many of the employers who pay monthly or semimonthly voluntarily caused the law to become effective on May 1. In a number of businesses, the employees who were not considered as possessing the necessary efficiency were notified that it was up to them to "make good" in order to retain their employment and the probationary period was fixed at from two to four weeks.

As a whole, it seems to be the consensus of opinion of employers that the law has increased efficiency to an appreciable extent. Perhaps not more than 5 per cent of the whole number of female employees were discharged because of this law going into effect and many of those who lost their employment found employment in other like establishments or in other lines.

About the time the law became effective, our department was called upon by a number of business concerns to determine what generally would be considered a year's experience as expressed in our law. They were informed that any girl or woman who had worked for the period of one year or more, or who had worked as an apprentice in a millinery establishment or as a laundry girl, telephone girl or in a factory or mill for a like period, would be considered as "experienced" in their respective avocations.

Some of the department stores claim that they experienced considerable difficulty with employees coming to them from small country stores and the 5 and 10 cent city stores. This class of employees are 18 years old and over and have had a year's or more experience. Employers are required to pay this class of girls or women not less than the minimum wage of \$1.25 per day and have found that others of their older employees who are working as minors and "inexperienced" are more efficient. This fact is soon manifested in a way that touches their pocketbooks, for the reason that the smaller-paid

help are soon at the elbows of their employers asking for an increase of wages with the plea that they are better or fully as efficient as the higher-paid employees with a country or small store experience.

The law has had a tendency to drive out the little errand girl in some establishments who was drawing from \$2.50 to \$3.50 per week and whose tenure of employment was oftentimes a semicharitable one.

Compared with many other Western States of equal and some of greater population, the wage scales of this State for both male and female labor are quite high, and our newly inaugurated minimum-wage law was instrumental in increasing the wages of but a small per cent (possibly 10) of our working girls and young women. In our laundries girls were generally paid from \$6 to \$7 per week and now they are paid \$7.50 per week. In the department stores, the wage was from \$4 to \$25 and in the millinery establishments from \$2.50 to \$25 per week. Apprentices in the millinery establishments must now be paid \$4.50 per week or else be permitted to work under instruction for absolutely no wage, in which condition the relationship of employer and employee is not established.

Thirty dollars a month or \$1 per day was the general wage of chambermaids in many European hotels and rooming houses. Now it must be \$1.25 per day for six days a week where neither board nor lodging is furnished.

As a whole, I think the law a fairly good one and have yet to learn where it is causing any considerable amount of oppression or injustice to anyone. Some small establishments, like country printing offices, that employed female apprentices at a wage of from \$3 to \$4 per week or the first year, claim that they can not afford to pay \$7.50 per week or such help during the second year.

In no establishment of the State, coming under our notice, that employs any considerable number of females, has the pay roll been increased over 5 per cent. I believe that the average is between 2 and 3 per cent.

The law has the tendency to equalize the wages of the inexperienced and the near experienced. I believe that it increases efficiency and what is of equal and greater importance will have a growing tendency to secure to competent women a living wage.¹

No formal report of the operations of the Utah law has yet been issued, but a paper read by Commissioner Haines before the National Convention of the Association of Government Labor Officials on June 9, 1914, explains the history of the law and discusses the results of its application.² The paper is given in full below:

Utah's arbitrary minimum-wage law for women and girls has now been in operation for one full year, a period long enough to form a partial conclusion of the merits, in one State at least, of a class of labor laws that is now uppermost in the minds of many students of important social and economic problems.

Before entering into a statement of the physical operations of the law and its practical results so far as may yet be determined, I desire

¹ Op. cit., pp. 209-212.

² Paper read by H. T. Haines, commissioner of immigration, labor, and statistics of Utah, before the National Convention of the Association of Government Labor Officials of the United States and Canada, at Nashville, Tenn., on June 9, 1914.

to first briefly call your attention to the ways and means by which Utah, one of the youngest States, and one having the fewest number of women and girls depending upon a daily wage for their sustenance, took a short cut through the wide but unknown field of proposed living-wage legislation, and enacted a minimum-wage law for females. Preliminary work leading to the preparation and presentation of a bill for the enactment of a minimum-wage law had been performed by a committee of the Federation of Women's Clubs of our State and the bill itself was presented by a woman member of the lower house of the legislature, of whom there were three. This bill followed closely the provisions of the bill first presented to the Massachusetts Legislature, but which was later much amended and therefore considerably unlike the Bay State's minimum-wage law in effect to-day.

The Utah bill provided for a commission, as have bills of all other States having minimum-wage laws now in force or pending. The proposed commission was to have been composed of three persons, to be appointed by the governor, one of whom was to have been a woman. The bill carried an appropriation of \$5,000 to meet the expenses of the commission for inquiring into the wages paid to women and girl employees in the various occupations in which they were engaged, with a view of ascertaining as nearly as possible the adequacy of the then prevailing wages to supply the employees with the necessary cost of living and to maintain them in health.

The commission was further empowered to establish a wage board consisting of three representative employers and an equal number of representative women employees, and one or more disinterested persons representing the public, whose duty it was to determine a minimum wage for women in occupations in which prevailing wages were found to be inadequate to meet the requirements of a living wage and to maintain the employees in health.

Merchants and manufacturers were quick to notice this effort for proposed legislation affecting their several interests and equally alert in protecting such interests. Arrangements were soon perfected for joint meetings of employers and employees and women's club representatives with the labor committee of the lower house. The merchants' and manufacturers' committee of the local commercial club strenuously opposed the bill in the form presented, asserting that the publicity feature in which the commission was authorized to publish in the daily papers the names of employers and the material facts of their findings through searching investigations into their businesses, was particularly objectionable and unnecessary. It was also maintained by them that the proposed investigating machinery was too bulky and that the \$5,000 that was proposed to be appropriated was insufficient to carry on the work in the manner outlined. With the women in their fight for the enactment of their bill, or one equally as good, were representatives of labor, and lobbies in the legislative halls were formed and maintained by the contending forces. At the public hearings before the house labor committee able and exhaustive arguments were made and heard, and but little advancement was apparently made for some time toward an amicable understanding between the participating forces. Finally a subcommittee of the merchants' and manufacturers' committee of the local commercial club drafted a bill that was accepted as a fairly good compromise between themselves, the club women, and labor representatives, and a substitute bill

embracing a wage scale as agreed upon was drafted by the subcommittee, which was later presented to the legislature and finally passed by a close vote in the lower house and unanimously in the senate.

The original bill contained over 1,800 words and the substitute bill about 200, yet the latter bill was such that it practically accomplishes about all that was sought to be secured through the more verbose and cumbersome measure.

The law itself fixes a minimum wage of 75 cents per day for any girl under the age of 18 years; 90 cents per day to a woman over the age of 18 years, who is inexperienced in the class of work she is employed to perform; \$1.25 per day to women who have served an apprenticeship in the line of work they are performing. The apprenticeship period is fixed at one year. Thus a woman or girl who has worked one year as a saleswoman must be paid \$1.25 per day. Likewise she must be paid as much as if she had worked as an operator in a factory of any kind, in a candy manufactory, laundry, etc., and is following these lines of employment.

The merchants' and manufacturers' subcommittee's bill gave \$1 per day to apprentices over 18 years of age, but the house committee cut the wage to 90 cents. In establishments where the piece system of wages obtains a woman's wages must be equal to the wages fixed by the minimum-wage law, based on a nine-hour-per-day service, that number of hours constituting a day's work for women in our State.

One of the objections raised by the house committee on labor to the minimum-wage bill, as first presented, was to the creation of a new State commission, and hence a new department. In order to eliminate this strongly opposed feature, the substitute bill designated the commissioner of the bureau of immigration, labor, and statistics as the officer to enforce the general provisions of the law. This department was already responsible for the enforcement of the nine-hour law for females, the eight-hour law for minors, and besides charged with other matters pertaining to labor and immigration, together with the gathering, compiling, and publication of statistics. Outside of the fixed salaries of the commissioner, two deputies, and a stenographer, rent, etc. (Utah not having a State capitol as yet), the department was allowed \$1,500 per year for all traveling, printing, stationery, and other incidental expenses. As the appropriation for the department was fixed before the passage of the minimum-wage law, it may be said that the only sum of money provided by the legislature for operating its minimum-wage law was but \$800, which was named in an amendment to the old act creating the bureau of immigration, labor, and statistics as the salary to be paid an additional deputy in the department, and which amendment stated that the new deputy should be a woman.

Here I wish to say that, in the absence of any knowledge by this convention of what criticisms may have been made or are being made concerning the operations of the law in Utah, I think the members of the convention will agree with me that it is being administered economically and that the legislature made a "ten strike" in its efforts to economize when it eliminated a \$5,000 per year department and attached the proposed work of such to another department and allowed it but \$800 for the performance of the required work.

The provision concerning a woman deputy was another concession to the women's club members, who contended that in the investiga-

tions of alleged violations of the minimum-wage and nine-hour laws, and the general conditions surrounding the employment of labor, a woman official would necessarily prove a helpful acquisition to the operating forces of the department. In this proposition they were partially right, but in passing it may be briefly stated at this point that in the handling of many cases wherein women employers were violators of the law enacted for the benefit of women wage earners, woman's inhumanity to woman was oftentimes manifested in a striking manner through their incourteous treatment of the woman deputy commissioner. Many women employers charged with violating the law stated that they preferred to deal with a man when investigations concerning their conduct toward their own sex were under consideration.

The most stubborn opposition to the passage of the measure came particularly from a representative of one large manufacturing establishment and from several small country merchants. The manufacturers' representative contended that in the line of employment which his concern offered to girls and young women there were certain classes of work requiring but little skill, for which service they could only afford to pay a low wage and could furthermore give employment to a class of females who possessed but meager mentality and were incapable of performing work that required average physical capacity. The argument advanced by him was that his corporation would necessarily have to discharge a number of females who would probably be unable to secure any other employment, or at least such employment at which they could earn as much as he was paying them in the establishment which he represented. Emphasis was placed by him on the probability of such employees becoming a permanent burden to their parents, relatives or friends, who would necessarily have to support them, or else they would become public charges.

The small country merchants set up the claim that their businesses did not warrant their paying a woman more than \$20 or \$25 per month, and in order for them to maintain female help they would have to discharge their experienced girls and employ only those under 18 years of age, or one older who had had less than one year's experience as a sales girl.

The practical workings of the law are yet to be told.

Briefly, the total number of women and girls in Utah coming under the operations of the law numbered about 12,000. Of the total number only about 6 per cent were under the age of 18 years, and were employed chiefly as errand or bundle girls in department stores, and in candy factories, box and knitting factories. No account was reckoned of the girls and women who, in the packing season, work in the canneries, of which we have quite a number. The operating period of some of these concerns is less than 60 days, and they employ quite a number of young folks of both sexes during that time of year embracing the school vacation for full or part days. However, their rates reach the minimum-wage scale. About 10 per cent of the 12,000 regular female employees come within the inexperienced or apprentice class, and the remaining 84 per cent in the experienced class.

A month prior to the day the minimum-wage law became effective our department sent to every regular employer of female labor of

whom it had any knowledge a printed copy of the law and also a blank calling for a statement of the number of females employed by them who were under 18 years of age, how many of this class they were paying less than 75 cents per day; how many of the female employees over the age of 18 years were inexperienced and how many were experienced, and how many of these two classes were being paid less than 90 cents and \$1.25 per day, respectively. They were requested to fill out these blanks and mail same to the labor department. In a number of later instances these blanks proved quite useful to us, especially in cases where employers of only a few girls, who kept no pay rolls by which our department might check their weekly wage accounts, and who had failed to adjust their wage schedules to meet the requirements of the new law. The same employers of female labor were later asked to fill out similar blanks bearing a date subsequent to the law becoming effective, and from this information, oftentimes unwittingly written upon these blanks, we discovered many violations of the law for which the employers were obliged to pay thousands of dollars in wages that fell short of being the minimum wage, or else defend a lawsuit in a court of justice.

The first complaint we filed was one against an establishment employing about 25 young women. Two weeks after the law went into effect it was reported to the department that this concern was not paying the minimum wage. The commissioner obtained a pay envelope from one of the girl employees upon which was written her name, the amount of her weekly wage, and date thereof, which was \$1 per week less than that provided by law. The commissioner called upon the proprietor of this establishment and requested to see the pay roll, a request that was at first denied until the law requiring employers to submit their pay rolls for inspection was presented. This pay roll showed that a number of girls were being paid less than the minimum wage, yet in the face of this fact and the envelope exhibited, the proprietor and the bookkeeper claimed that the establishment was paying the minimum wage. The proprietors dared not face a trial in this case, and a plea of guilty was entered before the day of trial, and each girl who had been underpaid was handed the balance legally due her.

During the full year the minimum-wage law has been in operation, our department has collected from employers over \$8,000, which was given into the hands of employees who were not receiving the minimum wage. In many instances the employers guilty of violating the law did so unconsciously or carelessly, having neglected to immediately act upon the notice sent out by the labor department and adjust their pay rolls to meet the requirements of the law. One large department store, employing in the neighborhood of 200 females, and paying semimonthly, was found guilty of violating the law for the reason that it paid its girls under 18 years of age but \$9 (two weeks' wages) on the 1st and 16th days of each month, computing the wage on 12 months a year basis, instead of at 52 weeks a year. When their attention was called to this matter, they thanked the labor department and promptly made up to each underpaid employee the balance due her.

Quite a number of employers apparently acted with indifference to the warnings of the labor department, evidently thinking that the department charged with the enforcement of the law had enough

else to do without investigating the amount of wages they were paying their help, and seeking refuge behind the fact that the underpaid employee well knew that her job was at stake if she entered a complaint. When the commissioner or deputy commissioners dropped into their places of business to question them or their employees, or examine their pay rolls, oftentimes being possessed in advance of their visits with incriminating facts pertaining to the wages that were being paid in the particular establishment under investigation, many unpleasant scenes occurred, which usually ended with all concerned getting together, computing the back wages due the underpaid employees, to whom a substantial sum of money was turned over, and a promise on the part of the employer to observe the law in the future, followed by a formal and apparently friendly farewell. The highest individual sum of money which our department has as yet collected in this manner for one girl is \$125, but several amounts approaching that sum have been obtained.

The law does not designate our department as a collection agency, but we assumed that for the reason that the law was intended to obtain better pay for girls who were drawing wages insufficient to meet their necessary living requirements, we would be carrying out the spirit of the law if we placed into their hands good hard cash, rather than summon them to appear in court as reluctant witnesses against their employers, and, in most cases, lose them their jobs, after which they would be required to bring a civil action to collect the legal wages due them, and if successful would be obliged to turn over nearly all that had been collected to some attorney for his services in the case.

A wise business man is a respecter of public opinion, and therefore few of such care to antagonize a law established for the payment of a fair wage to men or women. Some merchants and manufacturers will tell the commissioner of labor that they believe the minimum-wage law to be unconstitutional, and that it is too arbitrary; that it denies to some girls and women the employment that they are very much in need of, but they lack the moral courage to thus speak or publish such views to the world, and draw unto themselves the odium that the laboring classes feel for the employers opposed to laws intended for the betterment of wage earners. Hence our department has had to bring but seven cases for the violation of the minimum-wage law before the courts, six of which we have won and one is still pending. A case won has been appealed to the supreme court. This was a matter wherein a woman proprietor of a dressmaking establishment was paying an apprentice but \$5 a week, the minimum wage being \$5.40. The apprentice had been employed but three weeks and her employer was offered the privilege of paying the \$1.20 due the apprentice under the minimum-wage law, or else face a prosecution. She elected to fight, but after an action was instituted against her for her violation of the law, an attorney advised her to pay to the apprentice the \$1.20 due, which she did and then asked that the suit be withdrawn. In view of the fact that she slammed the door of her establishment in the face of the deputy commissioner and hung up the telephone receiver when the county attorney was advising her to pay the apprentice and thus avoid prosecution, the forces charged with the enforcement, prosecution, and dignity of the law

elected to allow the woman the opportunity of fighting until the supreme court of the State called "time." Thus the constitutionality of our little minimum-wage law is to be tested, and others besides the lady have quietly chipped in to help defray the expense of the legal scrap. One contributor is a man whom we had previously convicted of violating the law.

Summarizing its practical effects within the brief period it has been in operation, the law may be said to have been instrumental in raising the wages of a number of women and girls who most needed the additional sums of money it has placed in their hands. It has not increased the wage pay roll in establishments employing any considerable number of women over 5 per cent. As an offset to this, most employers admit that they have obtained increased efficiency, because proprietors or managers of many establishments employing a large number of female workers immediately preceding the date of this law becoming effective made the occasion an opportunity for heart-to-heart talks with their female employees, to emphasize the fact that it would be up to them (the employees) to make good in order to hold their positions. This presentation of the situation is alleged to have had a leavenous effect upon quite a few deficient employees who are now drawing more than the minimum wage. A few small country merchants claim to have been hard hit, and some formerly employing two girls now have but one. A very small number of women and girls who failed to produce the results fixed as necessary were dismissed from establishments, but most of them found other work for which they were better adapted, and consequently we can recall but few cases where a woman or girl has been utterly deprived of employment because of this law. In several cases where girls have been discharged because of the activities of our department in compelling employers to pay the minimum wage, we have found positions that were satisfactory to them.

And here, let me say, we have found among the business men of Utah many whole-souled, broad-minded, and philanthropic fellows who have stood ever ready to aid our department and assist us in the enforcement of the law by giving employment to the girl or woman who had been unkindly and unceremoniously discharged because of our insistence that she be paid the minimum wage and all back wages due her, or because she had given, or was willing to give, at the sacrifice of her job, incriminating evidence against her employer. Our progress in the enforcement of the law would often have been impeded had it not been for the cooperation of the men thus referred to.

One very important thing the law appears to have not done, as was feared, and that is that it has not caused the minimum wage to become very nearly the maximum wage. Of the 12,000 women wage earners in our State coming under the provisions of this law, we have not been able to find one woman or girl who was drawing \$7.50 per week at the time the law went into effect whose wages have suffered a decrease. The fear of some such action as this, by way of retaliation, was and has been often voiced prior and subsequent to the operations of this law, but the fear in our State appears to have been ill-founded. The situation now is that a much larger number of employees in Utah are drawing a wage in excess of the highest minimum wage than those who are paid the legal wage itself.

Another beneficial effect for the manufacturer is that it tends to equalize the cost of production, and the same deduction applies to the merchants, as the minimum wage will also in his case contribute to the equality in the cost of selling goods. The hard-fisted manufacturer or merchant who was inclined to purchase his labor for the cheapest price obtainable is now compelled by law to pay for labor about the same price that the more liberal and considerate employer is inclined to pay voluntarily.

I believe that I am justified in saying that 90 per cent of employers of women and girls are well satisfied with the law as it now stands and is enforced. Of course employees whose wages it has raised are satisfied and hope soon to see the minimum wage made higher. The women who are responsible for the enactment of the law feel that they have accomplished a great good for their sex, and no member of the legislature who voted for the law is apologizing to his constituents for his action.

An intelligent manager of one of Salt Lake's largest department stores, who was chairman of the subcommittee that drafted the minimum-wage law as it appears to-day, in a paper read before a national convention of merchants, recently held in one of the Eastern States, says of the law: " * * * Whatever its faults or virtues, there is little doubt that good has been uppermost. Without discussing its legal, moral, economic, or industrial bearings, I might venture the suggestion that of far greater importance than minimum-wage legislation for the uplift of women workers is preparatory education which operates automatically to raise the standard of wages in ratio to the standard of service. It would seem fair that if the State establishes a standard of wage it should assume the responsibility of furnishing service of equal value. Then it must follow that the greatest material service we can render the future women and girl workers is to prearrange such environment and education as will give them individual independence, self-supporting producing power. We must care better for our womanhood before it is thrown into the thick of the fight for existence and compelled to call to the State for minimum-wage protection. We should now know that we are in a period of change, humanizing change, and that along with the development of industrial institutions and processes has come a new world-wide subconscientiousness, which pleads the necessity of a fairer distribution of the products of labor, the uplift of the laborer, the better development and conservation of the mental and physical forces, a more humane and scientific application of productive human energy. The minimum wage helps, but let us first help the woman to know; she is then a law unto herself."

WASHINGTON.

The organization, methods, and results of the Washington minimum-wage law are shown in detail in the first biennial report of the commission,¹ recently published. The work of these commissions in the United States is so entirely new and the interest in the methods which they follow is so great that it has seemed best to present at some length the experience of the Washington commission, as shown

¹ First Biennial Report of the Industrial Welfare Commission, 1913-14. Olympia, 1915.

in its report. The following pages are based almost entirely upon the official report, being in large part quoted from it:

As directed by the law, which became effective June 12, 1913, the commission, upon its appointment by the governor, immediately undertook an investigation into the conditions of labor and wages paid to women and minors in the leading industries of the State.

* * * As the result of these investigations and the facts developed by them, conferences consisting of three employers, three employees, and three disinterested persons were called by the commission for each industry, and these conferences, pursuant to the law, recommended to the commission for its adoption or rejection an amount considered necessary to maintain a self-supporting woman in health and comfort.

In this manner legal wage rates have been established in five of the leading industries of the State, and the recommendations of the sixth industrial conference are now pending. The dates upon which the five became effective and the weekly wage rates are:

Mercantile industry, June 27, 1914.....	\$10. 00
Manufacturing industry, Aug. 1, 1914.....	8. 90
Laundrying industry, Aug. 24, 1914.....	9. 00
Telephone industry, Sept. 7, 1914.....	9. 00
General office occupations, Feb. 20, 1915.....	10. 00

These rates apply to experienced women workers more than 18 years of age, while a flat wage of \$6 per week has been established for all minors. Apprenticeship licenses permitting beginners to be paid less than the established minimum during the term of their indenture and providing for varying periods of wage advancement from \$6 per week to the legal rate are being issued by the commission under certain restrictions. * * *

While the commission has made provision for beginners to work during stated periods for less than the established wage, it is necessary for each such employee to have an apprentice license and unless the beginner has such a permit her employer is not only criminally liable if he employs her for less than the prescribed wage, but is also subject to civil suit by the employee to compel payment of the accumulated difference between the wage actually paid and the established rate, unless that difference is voluntarily paid. In order to rigidly enforce the law, the commission does not recognize a plea of ignorance from the less careful and conscientious, inasmuch as printed copies of all orders entered by the commission have been mailed to all establishments employing women, in so far as it was possible to do so, no absolutely reliable and complete directory being obtainable.

The fact has been discovered, however, that many employers have filed these orders away in their correspondence without having carefully noted their provisions, and that others have allowed them to be misplaced or lost, upon which pleas of ignorance have been based, but this condition is being rapidly overcome as the subject is being more widely discussed and better understood. Furthermore this law is not so difficult of enforcement as the eight-hour law for women, as the women themselves aid materially by demanding the increase in their wages provided by the new requirements. Incidentally, too, as the unpaid portion of the wage accumulates and reaches attrac-

tive proportions the employee is prompted to invoke the aid of the commission to collect it, and so the violation comes to light.

This, in general, is a résumé of what the commission has done. A review of work would not be complete, however, without mention of the case of the Seattle girl who was discharged by her employer for acting on the first laundry conference called by the commission. The provisions of the minimum-wage law fully contemplate the protection of the women workers against the prejudice and revenge of their employers when they are called on by the commission to give testimony in any investigation or proceeding relative to the enforcement of the act, and this case proved to be a forceful example of the necessity for such a provision in the law.

The commission asked the employer to reinstate the girl, but this he refused to do, and the facts in the case were then laid before the prosecuting attorney and a warrant issued for the laundryman's arrest. The trial was held and the defendant found guilty and fined \$100 and costs. His attorney served notice of appeal, but this has not been taken.

Through this trial the employers of the State early learned that the commission would brook no violation of the minimum-wage law. It was a good lesson, for it taught them that the commission, clothed with full authority to enforce the law, proposes to exercise that authority quickly and effectively.

None of the dire predictions made prior to the passage of the law have come about to an extent that questions the general efficiency of the law. There has been no wholesale discharge of women employees, no wholesale leveling of wages, no wholesale replacing of higher-paid workers by cheaper help, no tendency to make the minimum the maximum, while the employers of the State in general have been following the letter and spirit of the law and aiding greatly in its application.

These statements are based on a survey of three of the leading industries of the State, three of those in which the minimum wage was first established—mercantile establishments, laundries, and telephone exchanges. * * * That these effects are true is all the more remarkable from the fact that business conditions existing at the time the wage orders went into effect were not such as in themselves to secure a favorable reception.

The sequence of it all is that there are vastly more women workers in the State of Washington to-day receiving a living wage than there were two years ago, when the law was enacted; that there are more higher-paid girls now than there were then; that the whole wage standard together with the standard of efficiency and discipline has been raised; that industry itself has been taught the lesson that higher-paid workers are better workers.

Those industries which could most quickly impose the added cost of the increased wages upon the public by raising the prices of their products, have of course, been the least hurt, if any have been hurt, by this remedial legislation. Such others as could not immediately pass the burden on to society where it belongs, as society dictated and indorsed the law, are naturally having some difficulty in adjusting themselves to the new conditions. Particularly is this true of those industries of this State that come into direct competition with the products of the sweatshops of the East, the cracker and

candy factories, the garment makers, and the box factories, though the unusually high freight rates on boxes from the East operate to the advantage of the last named more so than to any of the others.

* * * * * * *

The following letter from a garment manufacturer of Seattle, a man whose products come into direct competition with the sweatshop labor of New York and Chicago and a man, too, who was quite strongly opposed to minimum-wage legislation prior to its enactment

* * * indicates his approval of the law after a fair trial and reflects the general sentiment among that class of employers that realizes the rights and interests of its employees:

Personally, I find that my business has been benefited, as the necessity for greater discipline and more rigid enforcement of regular hours of work has become fully apparent. We have raised our average weekly payroll, I think I am safe in saying, at least \$1 per girl, if not more. Some of our help, to be sure, have always done their best and have shown but little change, but those who were satisfied with less, the minimum wage has benefited, as they saw they must earn more or quit.

I am writing you this personal letter about my personal experience in an individual case. It has been a benefit in this factory in raising the standard of efficiency and in forcing a closer application to duty on the part of the operator and necessarily has been a benefit to the employer. I am not in a position to speak for other factories and industries, but, aside from some hardship that the law may work on the less competent, I can not see why it will not give a greater efficiency to our factory forces.

Some idea of the industrial effect of this legislation can be gained when it is realized that the industrial welfare commission's preliminary surveys of the factories, stores, laundries, and telephone exchanges of the State, showed that 60 per cent of the women employed were receiving less than a living wage prior to the application of the law, except in the stores, where the ratio ran about 50 per cent. The law, in other words, has advanced the wages of practically 60 per cent of the workers in these industries and has done it without serious opposition at a time when business conditions were none too good and when there was every incentive for the employer, if he had desired to hide behind the minimum-wage law and the dire predictions previously made, to offset the effect of the increased wages on his expenses by the employment of cheaper labor of whatever kind was available. To be sure, that excuse has been used to some extent, particularly where the employer wanted to get rid of a woman worker for some other reason, but a careful study of the statistics elsewhere published and the summaries of them, will convince even the most ardent opponent of minimum-wage legislation, that the women workers have neither been dismissed nor displaced by cheaper employees.

"I didn't know, until the minimum wage went into effect, that it paid to employ higher-priced women workers," the manager of a 10-cent store told a member of the commission, "but it does. They take more interest in their work, take better care of our goods, are more capable, more efficient, more satisfactory in every way," and these short sentences tell practically the whole story of the effect of the minimum wage.

The girl who wants to learn, to amount to something, to be of some value to her employer, to be competent, capable, and efficient, is reaping the benefits of the minimum wage; her less competent, less efficient, indifferent sisters are perhaps being hurt by it, if any workers are. The law has not operated to lessen the competition among women workers, as some thought it might; rather has it stimulated

the rivalry because the women are now being paid more nearly what they earn, and are willing to do more, as before the law became effective the chances for wage advancement were so small as to be discouraging. The employers, of course, having to pay more than before, are demanding more than before in the way of services; they are weeding out the incompetents and the misfits, when all efforts to train them properly fail, but they are not stopping there—they are advancing the more competent, the higher skilled, in a ratio that corresponds with the new wage standard. In other words, as the letter of the Seattle garment manufacturer previously quoted shows, the minimum wage has resulted in increasing the efficiency and the morale of the employees in the industries to which it has been applied. The employers are requiring better training of their apprentices now than they did before, for they know that, under the commission's restrictions, those apprentices will soon be entitled to the established wage and they want them to be worth it. * * *

There is a tendency, of course, for some women who have worked long enough at a particular occupation to be entitled to the minimum wage, to attempt to get apprenticeship licenses under which they could work for less than the minimum and thereby displace some sister worker, or to get back a position from which they had been dismissed by their employers when it was found they were not worth the wage. Perhaps this is due in part to the fact that for years the average woman worker—the one for whom the wage was established—has had it ground into her that her services are only worth a few dollars a week and she therefore does not realize the value of her labor, or it may be another indication of that tendency which prompts some women to defeat the spirit of the eight-hour law by working for more than one employer on the same day, yet the wave of disapproval which swept the ranks of the women workers when the commission's wage orders were first becoming effective—disapproval born of fear that they would lose their employment—has since been dissipated as the women workers have seen none of the evils predicted accomplished.

That there has been no leveling of wages will be quickly seen from a study of the tables hereinafter published, when it will be also discovered that in reality the obverse is true and that the whole wage standard, together with the standard of employment and discipline has been raised. That the number of women employed in this State has not been reduced more than the existing business conditions would warrant, is fully substantiated by that survey. That the number of women replaced by apprentices or minors or some other workers is so small as to be an absolutely negligible factor in the situation, can be realized when it is stated that the total number of minors and apprentices combined, in mercantile establishments, only equals the percentage established by the commission for the number of apprentices alone that would be permitted—17 per cent—from which fact it can be quickly seen why the commission is not greatly concerned over this feature of the establishment of the minimum-wage law.

Cost of Living.

In carrying the minimum-wage law into effect the commission endeavored to place the question of the cost of living before the several conferences in such a manner as to invoke the fullest discussion and

deliberation upon every possible item of the necessities of life required by a woman wage earner. It did this, not only because of the nature of the question itself, but principally because of the plain instructions of the law which made it necessary to delve into the question to the remotest detail to reach the conclusion it presumed. The tenor of the law is boldly set forth in its second section: "It shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance," and this is enforced by the requirements of section 3, which defines the duties of the commission in the following language: "There is hereby created a commission * * * to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington as shall be held hereunder to be reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women."

There could be no mistaking such language. It made absolutely plain the policy that should govern the commission and its conferences in determining the lowest wages that could be paid in those industries employing female labor. The "reasonable" requirements for the maintenance of a self-supporting woman were the basis upon which the minimum was to be fixed, and while it does not specifically mention that the class of women workers to be considered in making determinations must be self-supporting, it can not be construed by the widest stretch of the imagination that the legislature contemplated that consideration should be given to any support that might be forthcoming from any source other than the occupation in which women are engaged as wage earners, for if it did the law would do the self-dependent woman no good, and it was for her that it was designed.

* * * * *

Given this policy to follow, the commission set about gathering the vast amount of information necessary. Three distinct methods were followed: Some 30,000 blank forms were either mailed or distributed personally to as many employers and employees, requesting estimates as to the cost of living in the different localities in which they lived, as contemplated by the 30 different items entering into the reasonable annual expenses of a self-supporting woman; personal investigations were made by members of the commission and by several paid investigators; and, lastly, 16 informal conferences were held at various points in the State with employers and employees in the mercantile, manufacturing, and laundry industries. In this way a vast amount of detailed information concerning these industries, together with the telephone and telegraph, hotel and restaurant, fruit and fish canning, and general office occupations, was collected and compiled, * * *. Special emphasis was placed in all the investigations upon the cost of room and board, necessarily the largest single item of expense and the one most difficult for those of limited means. One of the first facts learned was, of course, that this cost varies in different portions of the State because of different climatic conditions and other influences, and also between large and small cities and between these and rural communities, yet the commission had to determine a wage uniform throughout the State and in all localities. Because of this feature of the law one important question is still unsatisfactorily determined: Should the girl living in the smaller town, where some items of expense for

the city girl, notably street-car fare, are absent and where the others may perhaps be less, receive the same wage as the girl who lives in the city? There was only one way to meet the situation, and that was to determine an average of expense between the city and the smaller community and to fix the wage at that amount.

The statistics on this subject, as far as it was possible to obtain them, were gathered from the women workers themselves, with special inquiry always as to room and board. The survey also included such other items as the cost of shoes and rubbers, repairing of shoes, stockings, underwear, petticoats, suit, coat, dresses and aprons, shirt waists, handkerchiefs, corsets, corset waists, gloves, neckwear, hats, umbrellas, repair of clothing, laundry, medicine and dentistry, street-car fare, newspapers and magazines, stationery and postage, association dues, insurance, vacation expenses, amusements, church and other contributions, and incidentals. All this information was compiled and published, * * * and copies of it were sent to all the members of the different conferences, each of whom, in turn, presented to the formal conference his or her estimate of the proper allowance for the different items entering into a woman's annual expenditure. No item was omitted and every condition of each industry that might influence the cost of living among its workers was considered.

Whether a girl employed as a saleslady required more for clothing than a factory worker; whether the woman who stands on wet concrete floors all day ironing in a laundry needs a greater allowance for shoes than either the saleslady or the factory worker; whether the waitress is entitled to more for her laundry than other employees in the same industry or other occupations, are samples of the more or less perplexing questions which necessarily must be satisfactorily determined before a proper minimum wage can be fixed. Hundreds of these queries arose in each conference and as the task of deciding them devolved upon these conferences, the responsibility was grave. That the conferees so regarded, even when first confronted with the request to participate in them, became immediately clear to the commission when it experienced difficulty in obtaining representatives to accept the important trust, and this was particularly true of the employees, who apparently felt most keenly the responsibility of assisting to determine the wages their sister workers should receive. Truth demands the statement, too, that among some of the employees there at first appeared a little of that hesitancy which is produced by fear that they personally might suffer in some way from their participation in the conferences, such treatment, perhaps, as the laundry girl in Seattle received when she was discharged by her employer after she had been a member of the first laundry and dye works conference, and this fear is not yet wholly dispelled, though the commission promptly and vigorously prosecuted the laundry girl's employer and obtained his conviction, and will do so again, if necessary.

It was no inconsiderable task, therefore, to obtain the members for each of the seven conferences that were called, but after the first two or three had been held the process was not quite so difficult. In each of them, of course, this question of the cost of living was the preeminent issue, and each of them handled the question a little differently, the action of the first having no bearing on the second,

or the second on the third, or so on. Each was an independent organization, called to decide its own problems, to estimate its own cost, and to fix its own wage with reference to that cost, and this fact will account in great measure for the variations in the allowances for different items on the schedule, as shown in the combined table. In each conference the estimates submitted by the employing and employed members were discussed and compared in open conference of all nine members, and then usually a committee composed of one from each of the three groups—employers, employees, and the public—took these estimates in each instance and by further discussion, comparison, and compromise reached a conclusion on each item, if possible, or at least on the allowance which should be made for all the items and it was on that allowance that the minimum wage was based. So it can be seen that the final decision in each conference was the outcome of nine persons' deliberations and not the whim of a single one or the contention of a single group. * * * The combined results of all the conferences are given in the table published below. * * * There will be noticed wide variations in the allowance for the same item in different occupations, and these can be explained almost entirely by the demands of the various occupations and partly by the fact that the conferees were only human, their estimates merely their own personal opinions, their decision their own best judgment. The industrial welfare commission, realizing this, perforce accepted the judgment of the conferences, except in one instance where it was evident that something other than consistent judgment entered into the decision, and established the wages as the conferences recommended. * * *

AVERAGE ANNUAL COST OF LIVING OF SELF-SUPPORTING WOMEN AS ESTIMATED BY SIX WASHINGTON MINIMUM-WAGE CONFERENCES.

Item.	Women employed in specified industries.						Average of all conferences.
	Mercantile.	Factory.	Laundry.	Telephone and telegraph.	Hotel and restaurant.	Office.	
Meals and room.....	\$302.92	\$242.09	\$254.75	\$266.93	\$286.46	\$286.38	\$273.25
Shoes and rubbers.....	7.12	7.98	10.45	12.23	11.71	9.66	9.86
Repairing of shoes.....	3.42	1.46	2.20	1.55	2.06	1.36	2.01
Stockings.....	2.17	2.38	2.75	3.32	4.45	2.10	2.86
Underwear.....	3.77	4.37	5.42	5.17	6.26	4.48	4.91
Petticoats.....	2.17	4.13	4.33	3.48	4.71	4.00	3.80
Suit.....	17.63	21.36	25.16	21.24	28.37	22.84	22.77
Coat.....	10.23	11.34	17.25	10.48	16.14	15.23	13.45
Dresses and aprons.....	14.53	10.81	11.73	10.19	25.44	19.33	15.34
Shirt waists.....	4.38	4.97	6.75	10.17	14.60	4.80	7.61
Handkerchiefs.....	1.16	1.68	1.07	1.85	1.84	1.52	1.52
Corsets.....	2.17	4.27	4.75	3.82	7.36	3.68	4.34
Corset waists.....	1.24	1.89	2.41	1.56	2.97	2.12	2.03
Gloves.....	2.33	2.48	2.87	4.48	3.80	3.04	3.17
Neckwear.....	1.00	1.64	1.00	1.02	1.80	1.92	1.38
Hats.....	6.75	7.00	10.00	12.39	9.81	9.37	9.22
Umbrella.....	1.40	2.20	1.37	1.30	1.67	1.36	1.55
Repair of clothing.....	3.83	4.41	2.25	2.24	2.38	4.64	3.29
Laundry.....	21.07	15.82	10.81	8.30	59.93	14.42	21.73
Medicine and dentistry.....	25.42	17.50	12.33	9.89	11.82	12.82	14.96
Street-car fare.....	32.39	26.84	30.95	28.93	13.05	27.59	26.62
Newspapers and magazines.....	11.00	3.06	2.83	2.65	4.07	3.68	4.55
Stationery and postage.....	4.84	4.48	2.25	2.98	2.91	4.19	3.61
Association dues.....	3.78	5.98	2.41	1.40	5.71	1.07	3.39
Insurance.....	3.05	7.56	7.28	1.12	3.80	12.66	5.91
Vacation expenses.....	10.54	14.28	9.66	9.17	13.56	16.02	12.21
Amusements.....	9.86	10.99	7.41	12.10	7.23	11.21	9.80
Church and other contributions.....	5.12	5.39	4.90	4.88	4.60	7.69	5.43
Incidentals.....	4.71	14.54	10.66	13.16	13.49	10.82	11.23
Total.....	520.00	462.80	468.00	468.00	572.00	520.00	501.80

Minimum-wage Conferences.

Practically the entire work of the commission to date is summarized in the six industrial conferences held since March 31, 1914, whose recommendations have resulted in the establishment of the minimum wage in all but one of those industries and the issuance of obligatory orders governing the conditions under which women and minors are permitted to work in those occupations. That, of course, was the real work of the commission and its action as set forth in this portion of the report is the result of all the preliminary investigations, surveys, informal conferences, tabulations, and formal conferences of the past two years.

Parenthetically it might be stated here that the commission has found it impossible in so short a time to establish these standards in all of the industries of the State and so has directed its energies toward putting the law into operation in the most important and most general occupations. Furthermore, so far as the fish canneries are concerned, the commission's investigations have developed the fact that the experienced women workers in those industries are already receiving a living wage; that the enactment of a minimum wage there would consequently affect none of them; and also that, inasmuch as these industries operate only a portion of the year, no women workers are dependent upon them for their living the year round. Consequently the commission has thus far taken no action regarding them.

The commission's investigations of the six leading industries of the State employing female labor did, however, reveal the necessity of the application of the minimum wage to them and the respective conferences were therefore called. Upon the commission the law placed the responsibility of determining the rules and regulations to govern the selection of the conferees and the mode of procedure for conducting the conferences, and in settling the latter point it immediately adopted the regular parliamentary form. In determining the personnel of the conferences, the commission decided there should be three conferees representing employees in the industry concerned, three representing employers, and three disinterested persons to act on behalf of the public. As elsewhere stated, the commission immediately encountered considerable difficulty in selecting the members of the conferences, especially those representing the employees, who hesitated about serving for fear they might lose their positions. The result was that the commission had to take into consideration as many as 50 or 60 persons in arranging for each conference, and a great amount of time was consumed in investigating the qualifications of all those suggested, each member of the commission nominating three or more persons whom they knew personally or by reputation or with whom they had come into contact during the preliminary work, for each place in each conference. From these the final selections were made, alternates also being designated, and proceeding in this manner the various formal conferences were called.

The important features of them are as follows:

Mercantile Establishments.

The first formal conference concerned the mercantile industry and was held in the senate chamber of the capitol March 31 and

April 1, 1914. It was attended by all the members of the commission and the following conferees:

Employers' representatives.—Messrs. J. L. Paine, Spokane; W. M. Cuddy, Tacoma; and George J. Wolff, Aberdeen.

Employees' representatives.—Mrs. Elizabeth Muir, Tacoma; Mrs. Florence Locke, Seattle; and Miss Mayme Smith, Spokane.

Public's representatives.—Mrs. Frances C. Axtell, Bellingham; Prof. W. G. Beach, University of Washington; and Mr. J. D. Fletcher, Tacoma.

After a full and harmonious discussion of all the details involved, the conference unanimously recommended that the commission (1) adopt a minimum wage of \$10 per week in mercantile establishments; (2) that such concerns be required to allow their female employees the period of one hour for noon luncheon; and (3) that the commission issue such obligatory orders as in its judgment were necessary to provide proper toilet facilities, rest rooms, and ventilation in mercantile establishments where women are employed.

Acting upon these recommendations, the commission, on April 28, 1914, issued the following obligatory order as applying to mercantile establishments, effective June 27, 1914:

I. W. C. ORDER NO. 1, APRIL 28, 1914.

To whom it may concern:

TAKE NOTICE.—That pursuant to the authority in it vested by chapter 174 of the Session Laws of the State of Washington for 1913, and pursuant to the recommendations of the conference of representatives of employers and employees in the mercantile occupation, together with representatives of the public, duly held after investigation of said occupation, which said recommendations were duly approved by said industrial welfare commission:

The Industrial Welfare Commission for the State of Washington does hereby order that—

(1) No person, firm, association, or corporation shall employ any female over the age of 18 years in any mercantile establishment, at a weekly wage rate of less than \$10, any lesser wage rate being hereby declared inadequate as to such employees to supply the necessary cost of living and maintain them in health.

(2) Not less than one hour shall be allowed for noonday luncheon to any female employee in any mercantile establishment, such requirement being demanded for the health of such employees.

(3) Every mercantile establishment where females are employed shall be provided with a toilet separate and apart from any toilet used by any male person, and such toilet shall be properly ventilated and kept and maintained in a sanitary condition, such requirements being demanded for the health and morals of such employees.

(4) Every mercantile establishment where females are employed shall be properly heated and ventilated, and shall provide and maintain adequate facilities and arrangements, so that such employees may obtain rest when in a state of fatigue or in case of illness.

This order shall become effective 60 days from the date hereof.

EDWARD W. OLSON, *Chairman*,
MRS. JACKSON SILBAUGH,
MRS. FLORENCE H. SWANSON,
M. H. MARVIN,
MRS. W. H. UDALL,

Industrial Welfare Commission for the State of Washington.

Attest:

Mrs. JACKSON SILBAUGH, *Secretary*.

NOTICE.—This order becomes effective June 27, 1914. Your attention is respectfully called to section 11, chapter 174, Session Laws of Washington 1913, which provides that each employer affected by this order shall keep a copy posted in each room in which women affected by this order are employed.

The probable terms and conditions affecting the employment of minors and apprentices became the subject of an interesting and

lengthy discussion during this first conference. In fact, it appeared for a time that a unanimous decision as to the recommendation for a minimum wage could not be reached until these questions were determined. However, when informed that according to the law these questions must be determined by the commission and could not be submitted to the conference, the latter confined itself to the recommendations noted above.

The commission then, proceeding as directed by the statute, issued the following order with reference to the employment of minors, effective on the same date:

I. W. C. ORDER NO. 2, APRIL 28, 1914.

That pursuant to the authority in it vested by chapter 174 of the Session Laws of Washington for 1913, and after due investigation by said commission as to the wages and conditions of labor of minors employed in the mercantile occupation, and the due determination by said commission of the wages and conditions of labor suitable for such minors:

The Industrial Welfare Commission for the State of Washington does hereby order that—

(1) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any mercantile establishment at a weekly wage rate of less than \$6, any less wage rate being hereby declared unsuitable in the premises.

(2) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any mercantile establishment, after the hour of 7.30 o'clock after noon of any day, such requirement being hereby declared suitable in the premises.

This order shall become effective 60 days from the date hereof (June 27, 1914).

Manufacturing Establishments.

The commission's second formal conference concerned the manufacturing industry and took place May 12 and 13, 1914, in the senate chamber of the capitol, with all the members of the commission present. The following-named persons constituted the conference:

Representing employers.—Messrs. Fred Krause, Spokane; O. B. Dagg, Seattle; and O. C. Fenlason, Hoquiam.

Representing employees.—Miss Emma Foisie, Seattle; Mrs. Belle Robair, Tacoma; and Mrs. F. H. Lawton, Spokane.

Representing public.—Mrs. W. C. Mills, Tacoma; Mr. Edgar C. Snyder, Seattle; and Prof. W. M. Kern, Walla Walla.

The following recommendations were made to the commission by the conference: (1) That a minimum wage of \$8.90 per week be established; (2) that every manufacturing establishment where females are employed should be properly heated and ventilated; and (3) that adequate facilities and arrangements should be provided so that such employees may obtain rest when in a state of fatigue or in case of illness. Acting upon these recommendations the commission on June 2 issued the following obligatory order, effective August 1:

I. W. C. ORDER NO. 3, JUNE 2, 1914.

(1) No person, firm, association, or corporation shall employ any female over the age of 18 years in any factory establishment at a weekly wage rate of less than \$8.90, any lesser wage rate being hereby declared inadequate as to such employees to supply the necessary cost of living and maintain them in health.

(2) Every manufacturing establishment where females are employed shall be properly heated and ventilated, and shall provide and maintain adequate facilities and arrangements so that such employees may obtain rest when in a state of fatigue or in case of illness, such requirements being demanded for the health and morals of such employees.

This order shall become effective 60 days from the date hereof (Aug. 1, 1914).

The following order with reference to minors, effective on the same date, was also issued by the commission:

I. W. C. ORDER NO. 4, JUNE 2, 1914.

(1) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any factory establishment at a weekly wage rate of less than \$6, any less wage rate being hereby declared unsuitable in the premises.

(2) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any factory establishment after the hour of 7.30 o'clock after noon of any day, such requirement being hereby declared suitable in the premises.

This order shall become effective 60 days from the date hereof (Aug. 1, 1914).

Laundries and Dye Works.

On May 14 and 15, 1914, the commission held its first formal conference on the question of the application of the law to the laundries and dye works of the State, and the following-named persons constituted the conference:

Representing employers.—Messrs. A. Jacobsen, Seattle; Frank Nixon, Raymond; and W. J. Doust, Spokane.

Representing employees.—Mrs. Julia A. Wilson, Spokane; Mrs. Hilda O'Connor, Seattle; and Miss Joanna Hiltz, Seattle.

Representing public.—Mrs. R. C. McCredie, Sunnyside; Rev. R. H. McGinnis, Tacoma; and Judge E. M. Day, Bellingham.

After a stormy discussion of the issues involved, the conference made the following recommendation to the commission: That a minimum wage of \$8.50 per week be established in all such industries in the State.

The commission promptly rejected the recommendation, on May 15, by the following resolution:

Whereas the investigations of the commission reveal that the cost of living for a woman employed in the laundry and dye-works industry in the State of Washington requires more than the sum of \$8.50 per week to maintain herself in health and comfort; and

Whereas the conference on the laundry and dye-works industry held at Olympia May 14 and 15 has recommended to this commission the above sum as the minimum wage for such women workers: Therefore be it

Resolved, That this commission hereby rejects said recommendation.

The commission then proceeded to call another conference.

The members of the second laundry and dye-works conference were entirely new. It met in the senate chamber of the capitol June 22 and 23, 1914, and was attended by all the members of the commission and the following conferees:

Representing employers.—Messrs. Frank T. McCullough, Spokane; A. Schmitz, Seattle; and Charles Erholm, Bellingham.

Representing employees.—Mrs. Lou Grant, Seattle; Mrs. Eva Miles, Spokane; and Miss Clara Sletsjoe, Seattle.

Representing public.—Mrs. Serena Matthews, Pullman; Rev. R. D. Snyder, Colfax; and Prof. W. P. Geiger, Tacoma.

The conference recommended: (1) That a minimum wage of \$9 per week be established; (2) that the noonday lunch period be not less than one hour, except in laundries in which the employers on request of two-thirds of the employees may have fixed a shorter period: *Provided*, That no lunch period shall be shorter than 30 minutes; and (3) that separate lavatories and toilets, properly screened and ventilated and kept at all times in a clean and sanitary condition, be provided for the women workers.

The commission rejected the recommendation regarding the lunch period, upon receipt of an opinion from the attorney general that it could not delegate such authority to employees. Acting upon the other recommendations the commission issued the following obligatory order June 25, 1914, effective August 24, 1914:

I. W. C. ORDER No. 5, JUNE 25, 1914.

(1) No person, firm, association, or corporation shall employ any female over the age of 18 years in any laundry or dye-works establishment, at a weekly wage rate of less than \$9, any lesser wage being hereby declared inadequate as to such employees to supply the necessary cost of living and maintain them in health.

(2) Every laundry and dye-works establishment where both males and females are employed shall provide suitable and proper wash and dressing rooms for such employees, and shall provide separate water-closets for males and females, and all such water-closets, wash and dressing rooms shall be properly screened and ventilated and at all times kept in a clean and sanitary condition.

This order shall become effective 60 days from the date hereof (Aug. 24, 1914).

By the authority in it vested the commission then issued the following order with reference to the employment of minors, effective on the same date:

I. W. C. ORDER No. 6, JUNE 25, 1914.

(1) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any laundry or dye-works establishment at a weekly wage rate of less than \$6, any lesser wage rate being hereby declared unsuitable in the premises.

(2) No person, firm, association, or corporation shall employ any person of either sex under the age of 18 years in any laundry or dye-works establishment after the hour of 7.30 o'clock after noon of any day, such requirement being hereby declared suitable in the premises.

(3) No person, firm, association, or corporation shall employ any female under the age of 18 years in the occupation of "shaker" in any laundry establishment.

This order shall become effective 60 days from the date hereof (Aug. 24, 1914).

Telephone and Telegraph.

This conference, which was convened in the senate chamber of the capitol at Olympia on June 26 and 27, 1914, was composed of the following-named persons:

Representing employers.—J. M. Winslow, Everett; C. E. Munsell, Wenatchee; and J. W. Newell, Seattle.

Representing employees.—Misses Zola McCoughlin, Tacoma; May Jenkins, Walla Walla; and Gertrude Wallner, Bellingham.

Representing public.—Prof. Henry M. Hart, Spokane; Dr. Ella J. Fifield, Tacoma; and Mrs. Helen Moore Bebb, Seattle.

A most peculiar situation developed in this conference, which did not occur in any of the others, when it was found that the members representing the public were wholly at variance with the other conferees as to the cost of living. This situation arose when it became evident that the members representing the employees were inclined to ignore the actual requirements of a self-supporting woman and to join passively the employers in the contention that a great majority of the girls employed in the industry were living at home, part of their living expenses thus being borne by their parents. To this argument the members representing the public strongly demurred, contending that, should less than a living wage be established, the parents would, as a matter of fact, be subsidizing the industry to the extent of the deficiency. Consequently there was a spirited discus-

sion of the issues involved before the following recommendations were made: (1) to establish a minimum wage of \$9 per week; (2) to require a lunch period of one hour; (3) that separate toilets, properly ventilated and kept in a sanitary condition, be provided for all female employees, and (4) that all establishments be heated and ventilated and that adequate facilities and arrangements be provided and maintained so that women employed may obtain rest when in a state of fatigue or in case of illness.

The commission, accepting these recommendations, issued the following obligatory order July 9, effective September 7, 1914:

I. W. C. ORDER No. 7, JULY 9, 1914.

(1) No person, firm, association, or corporation engaged in the operation of a telephone or telegraph line shall employ any female over the age of 18 years in any establishment in connection therewith at a weekly wage rate of less than \$9, any lesser wage rate being hereby declared inadequate as to such employees to supply the necessary cost of living and maintain them in health.

(2) Not less than one hour shall be allowed for a luncheon period to any female employed in any establishment used in connection with the operation of any telegraph or telephone line, such requirement being demanded for the health of such employees.

(3) Every establishment used in connection with the operation of any telephone or telegraph line, where females are employed, shall be provided with a toilet separate and apart from any toilet used by any male person, and such toilet shall be properly ventilated and kept and maintained in a sanitary condition, such requirements being demanded for the health and morals of such employees.

(4) Every establishment used in connection with the operation of any telegraph or telephone line, where females are employed, shall be properly heated and ventilated, and shall provide and maintain adequate facilities and arrangements so that such employees may obtain rest when in a state of fatigue or in case of illness.

This order shall become effective 60 days from the date hereof (Sept. 7, 1914).

The commission also issued the following obligatory order with reference to minors, on August 7, effective October 7, 1914:

I. W. C. ORDER No. 9, AMENDING I. W. C. ORDER No. 8, AUGUST 7, 1914.

(1) No person, firm, association or corporation shall employ any person of either sex under the age of 18 years in or in connection with any telephone or telegraph establishment at a weekly wage rate of less than \$6, any lesser wage rate being hereby declared unsuitable in the premises: *Provided*, That this order shall not apply to messengers, in third-class cities and towns, who are not continuously employed and who are paid by piece rate for their services.

(2) No person, firm, association, or corporation conducting, operating, or maintaining any telephone, telegraph, or mercantile establishment, or any messenger or parcel delivery service, shall employ any person of either sex under the age of 18 years before 6 o'clock in the morning or after 9 o'clock in the evening of any day.

(3) Nor shall any person, firm, association, or corporation employ any person of either sex under the age of 18 years in any telephone or telegraph establishment before 6 o'clock in the morning or after 9 o'clock in the evening of any day.

This order shall become effective 60 days from the date hereof (Oct. 7, 1914).

Hotels and Restaurants.

The only formal conference whose recommendations have not yet been adopted by the commission was that for hotels and restaurants, which was held December 1 and 2, 1914, with the following conferees:

Representing employers.—J. M. Hitchings, North Yakima; C. Allen Dale, Seattle; and Frank Lynn, Tacoma.

Representing employees.—Mrs. Amelia Berry, Seattle; Mrs. Emma Wilson, Tacoma; and Mrs. Fred Regline, North Yakima.

Representing public.—W. D. Lane, Seattle; Miss Janet Moore, Olympia; and Senator Walter S. Davis, Tacoma.

After a considerable discussion prompted by the various occupations embraced by the industry, the conference made the following recommendations:

(1) That a minimum wage of \$11 per week for waitresses and \$9 a week for all other employees be established; (2) that no more than \$3.50 per week be deducted from these sums for board and no more than \$2 per week for room, and that where both board and room are furnished, not more than \$5 be deducted; (3) that separate toilets be provided for all woman workers and that such toilets be properly ventilated and maintained in a sanitary condition; (4) that where special uniforms are required, they shall be furnished and laundered by the hotel or restaurant, and (5) that the employment of girls in cigar stands or at cigar counters be prohibited.

Before any action was taken on these recommendations the commission received a formal protest from the Washington Hotel Men's Association against the \$9 wage for all employees except waitresses and also a protest from the cigar-stand girls then at work, against the prohibition on their employment, as recommended by the conference. The commission granted the hotel men a hearing December 29, 1914, when they were represented by their attorney, Thomas B. McMahon, of Seattle, and by A. C. Mitchell, secretary of the association. At this hearing more time was asked by the hotel men and the request was granted. Investigation of the recommendation with reference to cigar-stand girls developed the fact that the commission could not legally prohibit the employment of women of mature age in a lawful occupation and that the proposed action was therefore beyond its province. Pending the further hearing requested by the hotel men, the commission is also pursuing an investigation of the \$11 wage recommended for waitresses.

Office Employees.

The commission's last formal conference prior to the compilation of this report concerned the various clerical occupations embraced in general office work and was held in the senate chamber of the capitol at Olympia, December 3 and 4, 1914, and was composed of the following persons:

Representing employers.—Harry L. Parr, Olympia; G. F. McAulay, North Yakima; and Frank S. Bayley, Seattle.

Representing employees.—Miss Gertrude E. McComb, Seattle; Mrs. Ethel Y. Carlson, Tacoma; and Miss Blanche Crimp, Ellensburg.

Representing public.—Mrs. Elwell Hoyt, Tacoma; Prof. J. H. Morgan, Ellensburg; and Mrs. Margaret C. Munnis, Seattle.

After an interesting discussion of the subject of suitable apparel for women in business offices, in which employer and employee submitted practically the same estimate for annual expenditures, the conference recommended the establishment of a minimum wage of \$10 per week for all clerical occupations. It also recommended that not less than one hour be allowed for noonday luncheon, and these recommendations were adopted by the commission at its meeting on December 21, 1914, and the orders issued were made effective February 20, 1915.

I. W. C. ORDER No. 10, DECEMBER 21, 1914.

(1) No person, firm, association, or corporation shall employ any female over the age of 18 years as a stenographer, bookkeeper, typist, billing clerk, filing clerk, cashier, checker, invoicer, comptometer operator, or in any clerical work of any kind in any establishment whatsoever, in which a minimum-wage rate applicable to such employee has not heretofore been established, as provided by law, at a weekly wage rate of less

than \$10, any lesser wage rate being hereby declared inadequate as to such employees to supply the necessary cost of living and maintain them in health.

(2) Not less than one hour shall be allowed for noonday luncheon to any female employee specified in paragraph (1) hereof, such requirement being demanded for the health of such employees.

This order shall become effective 60 days from the date hereof (Feb. 20, 1915).

I. W. C. ORDER NO. 11, DECEMBER 21, 1914.

(1) No person, firm, association, or corporation shall employ any person of either sex between the ages of 16 and 18 years in the occupation of stenographer, bookkeeper, typist, billing clerk, filing clerk, cashier, checker, invoicer, comptometer operator, or any clerical office work of whatsoever kind at a weekly wage rate of less than \$7.50, any lesser wage rate being hereby declared unsuitable in the premises.

(2) No person, firm, association, or corporation shall employ any person of either sex under the age of 16 years in the occupation of stenographer, bookkeeper, typist, billing clerk, filing clerk, cashier, checker, invoicer, comptometer operator, or any clerical office work of whatsoever kind at a weekly wage rate of less than \$6, any lesser wage rate being hereby declared unsuitable in the premises.

This order shall become effective 60 days from the date hereof (Feb. 20, 1915).

This was the only one of the six conferences in which members representing the disinterested public were not called upon to exercise their mission of compromise in order to bring the employer and employee closer together in their estimates. It was the only one of the conferences, too, in which at least one committee composed of one member of the employers, one of the employees, and one of the disinterested public, together with the chairman of the commission, had not been appointed in an endeavor to secure a unanimous agreement for the recommendation of a wage. The estimates of the employers and employees in former conferences had sometimes varied greatly, when the disinterested public by elimination or suggestion finally succeeded in effecting a compromise. In this conference no such service was required, since the employers recognized the justice of the request made by the employees and willingly acceded to it.

It is doubtful if a greater benefit has accrued from these conferences than the better understanding of the problems on the one hand and the needs upon the other that has characterized the deliberations of all of them. Many who have come from different parts of the State as strangers to each other to sit in these conferences have admitted that only good has come from the honest and earnest consideration of the questions which affect alike the employer and employee, and so the most hopeful phase of the whole vexing problem may be found in the breaking up of old prejudices, the giving up of hurtful customs, the recognition of justice, and the acceptance of the larger viewpoint.

Apprenticeship Rules.

The Washington law makes special provision for the inexperienced worker, so that the two classes of workers, experienced and inexperienced, may be treated separately and the results thus far obtained show the wisdom of this course. The section of the law covering this question reads:

For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall

fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

The question of apprenticeship came up for discussion in each conference, though it was not formally presented to any of them by the commission and, therefore, was not a subject for recommendation. * * * In dealing with this difficult problem new paths are being followed since the commission is, to a great extent, pioneering as far as the application of this important yet perplexing feature of minimum wages is concerned. The system which is being painstakingly worked out seeks to control the whole apprenticeship problem by the granting of licenses to bona fide apprentices and by limiting the number of apprentices in each establishment. This plan not only safeguards the interests of the apprentice but protects as well the experienced worker in the plant, and it is designed to eliminate the abuses inherent to the apprenticeship question, which, if unchecked, would result in weakening the whole minimum-wage structure, for by limiting the number of apprentices in each establishment a general displacement of skilled workers is prevented. In constructing this policy each occupation in the different industries has been given special investigation and consideration before determining the period of indenture and the wage which shall apply to that particular occupation.

That the apprentice may be paid according to the skill she acquires in her advancement toward the minimum wage the terms of the license provide an increase in wages at stated intervals, computed according to the advancement of the average learner in her earning capacity and based on investigations into the particular occupation to which the license applies, the piecework system affording a practical basis upon which to make these adjustments. The degree of skill required in each particular occupation is also a governing factor in fixing the period of indenture. From the fact that the established minimum wage is not intended to represent the maximum earning power of a skilled worker, it must not be presumed that the period of indenture allowed is intended to be the full term of apprenticeship, but rather to be that period of time necessary to reach the point of earning the minimum wage.

The gradual increase in wages as the apprenticeship proceeds is designed to protect the apprentice from being discharged when her term of indenture terminates, at which time she should graduate into the minimum-wage class of workers. This method offers no injustice to her employer as the adjustment is regulated according to her earning ability, while it requires the most careful consideration of each application for an apprentice's license, sometimes personal investigation, but always the closest scrutiny, since many who apply may have already served their full period of apprenticeship for that particular industry when the wage went into effect and sometimes seek to hide that fact. Naturally, under these conditions, difficulties are constantly being presented, which serve to increase the already complex situation. The commission is proceeding slowly that any defects in the system which develop may be remedied as the proper solution appears, since the effectiveness of minimum-wage legislation is largely dependent upon the manner in which apprenticeships are controlled.

The mercantile industry lent itself most readily to the satisfactory adjustment of apprenticeships, the governing policy determined for that industry being defined in a circular issued April 28, 1914, effective on June 27 following, and containing provisions as follows:

APRIL 28, 1914, EFFECTIVE JUNE 27, 1914.

(1) Application for license must be made by the apprentice upon printed blanks furnished by this commission.

(2) No license will be issued for a longer period than one year.

(3) A wage of not less than \$6 a week shall be paid to an apprentice during the first six months' period of employment of such apprentice, and a wage of not less than \$7.50 a week shall be paid to an apprentice during the second six months' period of employment of such apprentice.

(4) No license shall be valid in any mercantile establishment where more than 17 per cent of the total number of adult female employees are apprentices, nor where more than 50 per cent of such apprentices are receiving less than a weekly wage of \$7.50: *Provided, however,* That in mercantile establishments where less than six females are employed one license will be valid.

Upon the expiration of the year's apprenticeship, the licensee must receive the minimum wage of \$10 per week. The policy followed in issuing the license does not confine its holder to any one occupation unless she has entered it to learn some particular class of work, in which case the length of her apprenticeship period is shortened accordingly. It will thus be seen that the policy of issuing a license for a year in the mercantile industry is designed to give the learner an opportunity to become sufficiently experienced in the different occupations involved to enable her to command the minimum wage at the expiration of that time.

In such occupations as millinery, hairdressing, manicuring, and dressmaking, where the apprentice had been accustomed to pay for the privilege of learning the trade, a three or four months' initial apprenticeship period at a nominal wage is granted. This wage is only sufficient to pay the learner's street-car fare and lunches, but provides an advance at the end of that period and other increases which gradually lead her into the legal minimum wage. This system of apprenticeship will probably be the means of abolishing those so-called trade schools sometimes run in connection with such establishments, but will not apply to those exclusive trade schools which are not operated for a profit and therefore do not sell their product. In issuing licenses in these occupations the following policy governs:

Millinery and Dressmaking.

One year's apprenticeship divided into three periods as follows: Seventeen weeks at \$3 per week, 17 weeks at \$5 per week, and 18 weeks at \$7.50 per week.

Manicuring and Hairdressing.

One year's apprenticeship divided into four periods of 13 weeks each: \$1.50 per week for the first period, \$4 per week for the second, \$6 per week for the third, and \$8 per week for the fourth.

Telephones and Telegraphs.

An absolute policy was adopted with reference to apprentices in telephone and telegraph establishments. The system previously in operation in the larger exchanges was based on an apprenticeship period of 18 months, but the commission, being convinced that 18

months was a longer apprenticeship term than seemed just, reduced this to nine months, broken into two or four periods, owing to the locality in which the exchange is operated.

The wage scale is practically identical with the old system, except that the increases formerly made in 18 months must be completed in nine months. The learner begins at \$6 a week, receiving that for the first three months; \$6.60 per week for two months; \$7.20 per week for the following two months; \$7.80 for the last two months, and then \$9 per week—the established minimum. In the smaller exchanges the apprenticeship term is divided into but two periods, the learner receiving \$6 per week for the first four months and \$7.50 per week for the last five months.

Laundries.

The commission adopted the following policy with reference to apprentices in the laundering industry: Three months at \$6 per week and three months at \$7.50 per week. It also determined that no more than 25 per cent of the total number of females employed would be allowed as apprentices; further, that no more than half of those employed on the mangle machines may be apprentices, and that the time required to learn to feed a mangle shall not be more than two months.

The above limitations, however, have been taken advantage of by laundrymen in but a very few instances, as the survey shows that less than 8 per cent of the total number of laundry employees are apprentices or minors. Many of the large establishments have dispensed entirely with apprentices, relying wholly on securing the highest skilled help obtainable and paying the minimum wage or over in all cases.

Factories.

Apprenticeships in the manufacturing industry present a problem more intricate and far more difficult of satisfactory adjustment than do the other industries, because of the multiplicity of occupations involved.

Some of the occupations in this general industry require very little skill or time to learn, while others need both mental and physical adaptability to the particular work in question as well as a considerable period of time in which to master their details. The piece-rate plan of payment, which prevails in many factories, becomes an important factor in solving the problem, in that the worker's earning ability is estimated by the number of finished pieces she is able to turn out in a given time. Hence the amount found in the weekly pay envelope depends, not only upon the accurate knowledge of each intricate operation, but also the speed acquired by each individual worker. The fact that many of the manufacturing establishments of the State are not extensive enough to keep an entire force of operatives employed continuously at the same kind of employment compels many to become familiar with a number of different occupations, so that when work becomes slack in one department they can be transferred to another. Because of this condition girls become experienced in several, if not all, of the different departments of the same industry, thereby becoming more skilled, although usually not able to attain so great speed as when employed continuously in the

same kind of work, and when such a condition prevails they are required to serve a longer term of apprenticeship than when employed in one particular occupation. It will be readily realized that the almost endless number of occupations encountered in this industry makes the determination of a specific term of apprenticeship both unwise and unjust. It therefore became necessary for the commission to investigate each occupation separately and to issue licenses based upon the degree of skill required and the consequent time necessary to become familiar with each occupation involved. In accordance with this policy, licenses to apprentices in that industry range from six weeks to one year, broken into two or more periods, beginning with a wage of \$6 per week and approaching the minimum of \$8.90 through these various stages of advancement. Printed notices of instruction with reference to granting of apprenticeship licenses were issued as follows:

(1) Application for license must be made to the commission upon printed blanks, which will be furnished on request.

(2) The application blank must be filled out and sent to the commission by the employee and not by the employer.

(3) The term of license and wage to be paid by the employer will be determined by the commission, based upon previous experience of the applicant and the particular occupation in which she will be engaged.

(4) If a license be granted to the applicant it will be effective from the date of the application.

(5) Application blanks must be filled out in a complete manner or they will not be considered.

Office Employees.

It may be assumed that a girl's public school or business college course prepares her in large measure for service in general office work, and therefore only the additional time necessary to become familiar with the work of the particular establishment in which she is serving her apprenticeship need be considered in issuing licenses in such occupations. The general policy followed by the commission stipulates that licenses may be issued at a weekly wage rate of not less than \$7.50 and that the longest period of apprenticeship in any of the office employments shall not be more than six months.

Effects of Minimum-wage Law in Washington.

To ascertain the effect of the fixing of minimum-wage rates in Washington, the commission made a survey of some of the larger establishments in three of the industries where minimum rates had been put in force. The establishments covered in each survey were deemed to be fairly representative of the industry to which they belonged, and included all women and minors found on the pay rolls of such establishments at certain dates before and after the fixing of minimum rates.

The three industries covered in the commission's survey are set forth in the following tables, the figures having been obtained from 24 of the leading mercantile establishments, from 11 of the largest laundries in the State, and from a number of the largest telephone exchanges. They were taken from the regular pay rolls for the week ending September 20, 1913, and for the corresponding week of 1914,

therefore showing the wage conditions before and after the law became operative.

By a careful analysis of the results here given a conclusion as to the general effect of such legislation may be reached, bearing in mind always that the reports for 1914 were taken at a time of business depression, when conditions did not afford the most favorable test. Notwithstanding that fact, each industry covered records an increase in the average wage paid.

The entire number of workers included in the report for 1913 is 4,894, as against 4,828 in 1914, or a decrease of 66. In mercantile employment, 1914 shows a decrease of 87, and laundry employment a decrease of 30, while in telephone employment there was an increase of 51.

Since the mercantile and laundering industries are apt to respond more quickly to the business pulse, it is safe to assume that the very slight decrease in the number employed in 1914 was wholly due to business conditions and not attributable to the establishment of the wage. Were this decrease greater or were it to be found in those groups of women receiving the minimum or over, the conclusion might reasonably be attributed to the compulsory higher wage, but since it occurs wholly within those groups receiving less than the minimum, that contention can not be sustained. This conclusion is further strengthened by the fact that had the establishment of the wage been in any measure the cause, the decrease would have been very much greater.

COMPARATIVE WAGES OF FEMALES AND MINORS EMPLOYED IN 24 MERCANTILE ESTABLISHMENTS IN SEPTEMBER, 1913, AND SEPTEMBER, 1914.

Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.		Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.	
	1913	1914	1913	1914		1913	1914	1913	1914
\$3.00	20	5	4	-----	\$14.00	80	42	41	31
3.50	-----	-----	1	-----	14.50	2	6	1	3
4.00	50	-----	18	-----	15.00	164	194	100	114
4.50	18	-----	8	-----	15.50	2	-----	1	2
5.00	72	-----	25	-----	16.00	27	33	19	24
5.50	2	-----	4	1	16.50	15	25	10	22
6.00	254	276	100	48	17.00	14	18	10	13
6.50	4	5	2	1	17.50	26	33	17	18
7.00	311	55	141	12	18.00	65	57	38	35
7.50	48	67	17	15	18.50	4	5	3	4
8.00	490	114	204	16	19.00	5	5	3	4
8.50	44	-----	16	3	19.50	4	6	4	5
9.00	441	25	192	4	20.00	57	71	38	53
9.50	4	14	4	-----	21.00	3	1	2	1
10.00	370	1,323	188	677	22.00	23	23	16	17
10.50	13	26	5	9	25.00	37	42	27	31
11.00	72	132	50	103	27.50	7	3	3	3
11.50	8	11	5	7	30.00	0	10	7	9
12.00	355	372	193	216	35.00	9	6	6	0
12.50	16	13	9	9	Over \$35.00	5	10	4	4
13.00	22	38	15	26					
13.50	37	36	20	26					
					Total	3,189	3,102	1,571	1,571

¹ The minimum wage became effective June 27, 1914.

According to the above table, out of the total of 3,189 women and minors found on the pay rolls in September, 1913, 1,571, or 49.2 per cent, were still employed in September, 1914, three months after the minimum-wage determination became effective in that industry. Comparing the wages received in 1914 with those received in 1913, it is seen that 636 employees had been advanced to the \$10 legal minimum wage, and of those receiving more than \$10 per week in 1913, 147 had been advanced to a higher wage in 1914, making a general increase to 783 employees, or 49.8 per cent of the total shown.

COMPARATIVE WAGES OF FEMALES AND MINORS EMPLOYED IN 11 LAUNDRIES IN SEPTEMBER, 1913, AND SEPTEMBER, 1914.

Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.		Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.	
	1913	1914	1913	1914		1913	1914	1913	1914
\$6.00.....	4	8	.....	.....	\$9.75.....	8	5	1	2
6.25.....	7	1	1	.....	10.00.....	63	50	29	25
6.50.....	.....	.....	2	.....	10.50.....	16	25	4	10
6.75.....	18	2	3	.....	11.00.....	42	35	21	24
7.00.....	5	7	15	.....	11.50.....	8	5	3	3
7.25.....	62	12	5	1	12.00.....	49	61	27	31
7.50.....	10	4	4	1	12.50.....	7	12	3	6
7.75.....	25	1	4	.....	13.00.....	19	26	13	15
8.00.....	74	11	22	2	13.50.....	5	8	4	7
8.25.....	18	.....	6	.....	14.00.....	12	11	6	9
8.50.....	41	.....	16	.....	14.50.....	5	3	3	2
8.75.....	22	.....	6	.....	15.00 and over.....	37	25	26	23
9.00.....	66	267	17	76	Total.....	665	635	260	260
9.25.....	7	0	0	3					
9.50.....	35	47	13	20					

¹ The minimum wage became effective Aug. 24, 1914.

According to the above table, out of a total of 665 women and girls found on the pay rolls of 11 establishments in 1913, 260, or 39 per cent, were still employed in September, 1914, after the minimum wage had become effective in that industry. In 1913 there were 286 women receiving less than \$9, while in 1914 only 46 received less than that amount. These 46 girls were either minors or apprentices. In 1913, 66 girls were receiving \$9, while in 1914, after the minimum wage became effective, this number was increased to 267. In 1913 only 379 women were receiving \$9 or more, while in 1914 there were 589 receiving this amount.

COMPARATIVE WAGES OF FEMALES AND MINORS IN TELEPHONE EMPLOYMENT
IN SEPTEMBER, 1913, AND SEPTEMBER, 1914.

Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.		Weekly wage. ¹	Total number of females and minors.		Females and minors on pay rolls of both 1913 and 1914.	
	1913	1914	1913	1914		1913	1914	1913	1914
\$6.00	62	52	17	.....	\$9.90	28	282	12	138
6.30	8	3	1	1	10.20	110	126	69	109
6.60	13	23	4	.....	10.50	18	42	10	33
6.90	90	23	35	.....	10.80	30	49	21	34
7.20	12	12	5	.....	11.10	9	31	5	15
7.50	106	58	48	.....	11.40	22	20	16	18
7.80	27	12	17	2	11.70	15	19	7	17
8.10	66	28	38	.....	12.00	21	28	19	23
8.40	80	7	45	.....	12.50	5	12	3	11
8.70	74	12	41	.....	13.00	2	3	3	2
9.00	64	129	42	68	Over \$13.00	30	36	26	34
9.30	92	2	52	2	Total	1,040	1,091	565	565
9.60	55	82	29	58					

¹ The minimum wage became effective Sept. 7, 1914.

According to the above table, out of a total of 1,040 women and girls found on the pay rolls in September, 1913, 565, or 54.3 per cent, were still employed in September, 1914, after the minimum wage had become effective in that industry. In 1913 there were 539 girls receiving less than \$9, while in 1914 only 230 were employed at so low a rate. These were all minors or apprentices. In 1913 only 64 girls were receiving \$9 per week, while in 1914, after the minimum wage became effective, this number was increased to 129. Out of a total of 539 girls, 309, or 57.3 per cent, had been advanced to the minimum or over, the number receiving \$9.90 in 1913 having been increased from 28 to 282 in 1914. In 1913 there were 437 girls receiving over \$9, while in 1914 this number was increased to 732.

Opinions of the Attorney General.

OLYMPIA, WASH., October 24, 1913.

Hon. E. W. OLSON,

Chairman of the Industrial Welfare Commission, Olympia, Wash.

DEAR SIR: I am in receipt of your letter as follows:

I desire to obtain your opinion upon the following points, relative to the powers of the Industrial Welfare Commission for the State of Washington, as established by chapter 174, Laws 1913, State of Washington:

(1) In the event that any conference called by the commission shall find the health or morals of women or minors to be perniciously affected by the employment of said women or minors in any industry (a) for a number of hours per day or week not specifically prohibited by the eight-hour law, or (b) during a period of each 24 hours not at present specifically prohibited by law; and in the event that such conference shall recommend to this commission that such number or arrangement of hours be changed, does the power reside in this commission to issue an obligatory order embodying such recommendation?

(2) In the event that the cost of maintenance for women workers shall be found to vary in different parts of the State, does the power reside in this commission, upon the recommendation of any conference, to issue an obligatory order which shall specify different wage minimums in different parts of the State for women workers in the same industry or occupation?

First. In my opinion chapter 174 of the Laws of 1913 does not repeal chapter 37 of the Laws of 1911, commonly known as the "eight-hour law for women." It would seem, therefore, that the commission has no power to issue an obligatory order embodying a recommendation of a conference as to the number of hours per day or week, or the number of hours within any 24 hours, women may be employed, where such women are within the terms of the eight-hour law.

Second. From a careful reading of chapter 174, *supra*, it is my opinion that any order fixing a minimum wage for women must be general throughout the State as to the particular trade or industry affected.

These questions, however, are by no means free from doubt, and if it is deemed advisable to enter orders in conflict with the conclusions above stated, I would suggest that such orders be entered, and the matter of the determination of their validity be left to the courts.

Yours respectfully,

W. V. TANNER,
Attorney General.

OLYMPIA, WASH., *January 13, 1914.*

Hon. E. W. OLSON,

Chairman Industrial Welfare Commission, Olympia, Wash.

DEAR SIR: You have requested the opinion of this office upon the following question:

Does the power reside in this commission, in pursuance of the duties imposed upon it in section 10 of chapter 174, Laws of 1913, to determine and define what shall constitute an occupation, trade or industry?

Section 10, chapter 174, Laws of 1913, provides in part as follows:

If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employees in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. * * *

No particular classification being directed by statute, it follows that the commission is authorized to exercise a reasonable discretion in making proper classifications for the purposes of investigations and conferences.

You are advised that the commission has authority to make investigations and to determine and define, within reasonable bounds, what shall constitute an occupation, trade, or industry for the purpose of investigations and conferences. We must not be understood as advising that the commission is authorized to make, or is justified in making, arbitrary classifications or distinctions, so as to include within such classifications or definitions, occupations, trades, or industries having obviously no reasonable relation one to the other.

Yours respectfully,

SCOTT Z. HENDERSON,
Assistant Attorney General.

OLYMPIA, WASH., *January 13, 1914.*

Hon. E. W. OLSON,

Chairman Industrial Welfare Commission, Olympia, Wash.

DEAR SIR: We are in receipt of your request, which is as follows:

I desire to request from you whether or not under the provisions of section 13, chapter 174, Laws of 1913, it shall be necessary for this commission to submit to a conference for its recommendations the question of the adoption of rules to be followed in issuing through the secretary of the commission to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage.

Section 13, chapter 174, Laws of 1913, provides:

For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

No reference is made in said section to a conference, and nowhere in the act is there provision made for submitting to the conference for its recommendation the question of the adoption of rules to be followed with reference to the provisions of section 13, supra.

You are, therefore, advised that the matter of the license referred to in said section is within the discretion of the commission, subject to no condition with reference to recommendations of a conference, except that a minimum rate must have been established for such occupation.

Yours, respectfully,

SCOTT Z. HENDERSON,
Assistant Attorney General.

Regulations of Commission Governing Procedure of Conferences.

The Industrial Welfare Commission for the State of Washington, duly appointed and qualified as provided by chapter 174 of the Session Laws of 1913 of the said State of Washington, having heretofore made investigation as provided by law concerning the employment of women and minors in the mercantile industry, the wages paid said women and minors, and the conditions surrounding their work and employment in said industry, and being fully advised in the premises, finds as follows:

That in the said mercantile industry within the State of Washington the wages paid to female employees in said industry are inadequate to supply them necessary cost of living and to maintain the workers therein in health, and that the conditions of labor therein are prejudicial to the health and morals of the workers:

Therefore, by virtue of the authority conferred upon this commission by law and in pursuance thereof, it is hereby ordered that a conference be called for the consideration of wages paid and conditions of labor in said mercantile industry, said conference to be composed of an equal number of representatives of employers and employees

in said industry, together with an equal number of disinterested persons representing the public as hereinafter provided, the date of the first convention of said conference to be fixed by this commission after the representatives of said conference have been duly selected as hereinafter provided.

The term "commission" shall mean the Industrial Welfare Commission of the State of Washington.

It is hereby further ordered that the following rules and regulations be, and the same are hereby, adopted as the rules and regulations governing the selection of representatives and the mode of procedure of said conference.

1. A conference shall consist of nine persons and a member of the commission who shall be chairman of said conference, three to represent the employers, three to represent the employees, and three to represent the public. One of the members representing the public shall be appointed by the chairman as chief interrogator. A member of the commission shall act as chairman of the conference.

2. The method of selecting members of the conference shall be as follows:

Each member of the commission shall nominate and send nine names to the secretary thereof. Three of these shall be employers in the industry for which the conference is being called; three shall be employees in said industry, and three shall be disinterested persons to represent the public. The secretary in turn shall then send a complete list to each member of the commission for his or her investigation, a period of at least one week being allowed for that purpose, after which the commission, sitting in regular session or any special session of the commission called for said purpose, shall select from among these names nine persons who shall constitute the conference, of whom at least one employer and one employee shall be from that portion of the State east of the summit of the Cascade Mountains.

3. After the selection of the members of the conference in each industry as provided in the foregoing section, the commission shall, from the names remaining, select nine alternates who shall have the same qualifications for membership on the conference as the regularly selected members; these alternates to fill any vacancies that may occur, according to a definite priority to be determined by the commission at the time of their selection.

4. A conference thus selected may, upon request by the commission, be called together at any time and place that the commission may designate, provided that each member of said conference shall be given at least 10 days' notice of such meeting and at the time of serving such notice shall be provided with a copy of the report of the findings of the commission in its investigation of the wages and conditions of labor of women and minors in the trade or industry for which the conference is called, and shall serve until discharged by the commission.

5. When the conference is called to order by the chairman, it shall deliberate under parliamentary law, and no question shall be discussed that is not germane to the conditions of labor or cost of living of working women or minors as applied to that particular trade or industry. Roberts's Rules of Order shall govern.

6. The commission may at its discretion fill any vacancies that may occur in its conferences.

7. The conference in its deliberations shall proceed on the principle established by the commission that a minimum wage or condition of labor of women and minors shall be general throughout the State as to the particular trade or industry affected wherever same shall be established.

8. The chair shall not permit the discussion of the question as a whole until after each item of the cost of living has been taken up in the order given in the estimate blanks prepared by the commission, unless otherwise directed by a majority vote of the conference. After proper deliberation and discussion of questions that have been presented to the conference by the commission, the conference shall then, upon request of the commission, proceed to make recommendations upon such questions as the commission may designate.

9. The members of the conference so selected shall be paid their actual traveling and hotel expenses while attending said conference (out of the regular appropriation set aside by the legislature), provided that evidence of such expense be filed with the commission and sworn to in the manner provided by law, and it is further provided that before being allowed said expenses are to be approved by the commission.

10. The secretary of the commission or a shorthand reporter shall be present at each conference and shall record the minutes of the meetings, and shall be ex officio secretary of said conference.

11. No member of the conference shall be entitled to speak more than twice on any subject, or more than five minutes at a time, except by unanimous consent of the conference.

12. The commission may amend, modify, or suspend, by a two-thirds vote, any of the foregoing rules or regulations.

Dated at Olympia, Wash., March 10, 1914.

WISCONSIN.

The Wisconsin act came into effect permissively July 1, 1913, and compulsorily July 1, 1914; that is, the law authorized the commission, upon its own initiative, to undertake investigations for the purpose of wage determinations after July 1, 1913, but directed that such investigations must be taken up upon complaint after July 1, 1914.

Preliminary to the Wisconsin law becoming fully effective, the commission undertook an investigation of wages, cost of living, etc., for female and minor employees. The results of this investigation have not yet been published. A recent letter from the commission, in response to an inquiry, states that the whole question has been delayed because the commission is awaiting the action of the supreme court on the Oregon law.

ATTITUDE OF THE AMERICAN FEDERATION OF LABOR ON THE LEGAL MINIMUM WAGE.¹

From the report we have given, it will be observed that the movement for a minimum wage for women and minors has gained considerable headway in our country, and that sentiment in favor of a living wage is rapidly crystallizing. That this growth of sentiment among the people is due to the activities of the organized wage earners there can be no doubt. The organized labor movement has insisted from the beginning upon the establishment of a living wage as a minimum, and it has through the force of organized effort, succeeded in establishing minimum wages and maximum hours of labor far superior to those prescribed by the wage boards of other countries.

There is a marked difference, however, between the laws of other countries and the laws enacted or proposed in various States in our country. In England and in Australia authority is vested in wage boards to fix minimum wages for men workers as well as for women and minors; whereas in America these laws relate exclusively to women workers and to minors. If it were proposed in this country to vest authority in any tribunal to fix by law wages for men, labor would protest by every means in its power. Through organization the wages of men can and will be maintained at a higher minimum than they would be if fixed by legal enactment.

But there is a far more significant ground for opposing the establishment by law of a minimum wage for men. The principle that organization is the most potent means for a shorter workday and for a higher standard of wages applies to women workers equally as to men. But the fact must be recognized that the organization of women workers constitutes a separate and more difficult problem. Women do not organize as readily or as stably as men. They are therefore more easily exploited. They certainly are in a greater measure than men entitled to the concern of society. A fair standard of wages, a living wage for all employed in an industry, should be the first consideration in production. None are more entitled to that standard than are the women and minors. An industry which denies to all its workers and particularly denies to its women and minors who are toilers a living wage is unfit and should not be permitted to exist.

We recognize, of course, that in our time legislation of this character is experimental and that sufficient experience with it has not been had to enable us to secure comprehensive and accurate information as to its tendency and its effect upon wages and industrial conditions; therefore, we recommend that for the information of the labor movement the executive council be instructed to watch developments where such legislation is in force and to record carefully the activities, the decisions, and the trend of minimum-wage boards.

We recommend that in all minimum-wage laws the organized workers should see to it that provision is made for the representation on minimum-wage boards of the organized wage earners, and that the laws are so changed or drawn and administered as to afford the largest measure of protection to women and minor workers—those they are designed to protect.

¹ From Report of Executive Council in Report of Proceedings of the Thirty-third Annual Convention of the American Federation of Labor. Washington, 1913, pp. 63 and 64.

MINIMUM-WAGE LEGISLATION IN AUSTRALIA AND NEW ZEALAND.¹

INTRODUCTION.

The models and the experience upon which all of the minimum-wage legislation in Great Britain and the United States are based are to be found in the history of the movement in Australia (in Victoria, especially) and New Zealand since the introduction of the system in those countries, in Victoria in 1896 and in New Zealand in 1894.

Two systems based on different principles exist in Australia and New Zealand for the regulation of wages and conditions of employment. A wages-board system exists in Victoria and Tasmania, and an industrial arbitration-court system in New Zealand and Western Australia. In New South Wales and, since 1912, in Queensland and South Australia the two systems are combined, wages or industrial boards as well as industrial arbitration courts forming a part of the system.

Under the wages-board system in Victoria the board determinations may be reviewed by the court of industrial appeals. In Tasmania an appeal may be made to the supreme court. Under the mixed system in existence in New South Wales the industrial boards are under the control of the industrial court, and the awards of the industrial boards may be reviewed by the court. A similar method is followed in Queensland and South Australia. There is also an arbitration court of the Commonwealth of Australia, which has power to deal with wages. The power of the Commonwealth court, however, is limited to matters extending beyond the limits of a single State.

The chief aims of the wages-board system are to regulate wages, hours, and conditions of employment by the decision of a wages board or compulsory conference (called a special board) of representatives of employers and employees, presided over by a neutral chairman. A determination of this board, unless disapproved by the court on review, applies compulsorily to the entire industry and area for which the board was created. The wages board is usually brought into existence for any specified industry or group of industries by petition or application, followed by authorization in a resolution of Parliament. Under the industrial arbitration court system, the chief purpose of which is the prevention and settlement of industrial dis-

¹ This section is based largely upon a summary given in the *Official Year Book of the Commonwealth of Australia*, No. 7, 1914, pp. 920, et seq.

putes, an industry does not come under review until a dispute has actually arisen. Most of the acts, however, have given the president of the court power to summon a compulsory conference. The scope of the arbitration court's authority is even broader than that of the wages boards, applying to any industrial matters.

WAGES-BOARD SYSTEM.

The wages-board system was introduced in Victoria by the factories and shops act of 1896. The original bill made provision only for the regulation of the wages of women and children, but it was afterwards amended in Parliament to extend the system to adult employees of both sexes.

The act of 1896 made provision for the regulation of wages in six sweated trades only. By an act of 1900 the operations of the law were extended to include all persons employed, either inside or outside a factory or workroom, in any trade usually carried on therein. The act of 1907 extended the system to trades and businesses not connected in any way with factories, making provision for the appointment of wages boards for metropolitan shop employees, carters and drivers, and persons employed in connection with buildings or quarrying, or the preparation of firewood for sale, or the distribution of coal or coke. The act of 1909 extended the system to the mining industry, and those of 1910 extended the operation of the act to the shires.

Originally the wages board was elected, but the difficulty of compiling electoral rolls led to the adoption of the simpler system of nomination, which has proved satisfactory.

The board fixes the wages and hours of work and may limit the number of improvers who may be employed (usually by prescribing one to a certain number of journeymen employed). The board fixes the wages of apprentices and improvers according to age, sex, and experience, and may fix a graduated scale of rates calculated on the same basis. Apprentices bound for less than three years are improvers unless the minister sanctions the shorter term of apprenticeship on account of previous experience in the trade. The minister may sanction the employment of an improver over 21 years of age at a rate proportionate to his experience. Workers in the clothing trade must be paid piece rates. Manufacturers may, by leave of the board, fix their own piece rates if calculated upon the average wages of time workers as fixed by the board. Licenses for 12 months to work at a fixed rate lower than the minimum rate may be granted by the chief inspector of factories to persons unable to obtain employment by reason of age, slowness, or infirmity. Such licenses are renewable.

Penalties are fixed for the direct or indirect violation of determinations, the violation being ascertained by examination of the records of wages which are required to be kept.

The court of industrial appeals has power to review the determinations of the boards.

In Tasmania the wages-board system was introduced by the act of 1910 (January 13, 1911) and came into operation March 31, 1911. The experience, therefore, is limited.

South Australia enacted the wages-board system in 1900, 1904, and 1906, but the first-named act was rendered inoperative owing to the failure of Parliament to enact the regulations necessary for carrying it into effect. The act of 1904 revived the wages-board system respecting women and children in white-goods trades. The action of this statute was paralyzed by a decision, the effect of which was to prevent a graduated scale of wages, such as fixed by the Victorian boards. The necessity for some protection to the persons intended to be benefited by these statutes was urged in the annual reports of the chief inspector of factories, but until 1906 without effect. Many employers, however, voluntarily complied with the board's determinations during the period when, because of the failure of the law, they were without legal force. The system was brought into full operation by the act of 1906, which preceded the Victorian act of 1907 in extending the system to other trades, and was of a wider scope than the Victorian act.

In New South Wales industrial boards were introduced under the industrial disputes act, 1908, the arbitration-court system having been in existence from 1901 to that date. The act of 1912 introduced the mixed system of industrial boards and an industrial court.

Wages boards were introduced in Queensland under the wages boards act of 1908 and this act with the amending acts continued in force until repealed and replaced by the industrial peace act, 1912, which came into effect January 1, 1913. This act, while embodying the principal provisions of the wages boards acts, provided for the establishment of an industrial court of appeals. All boards established under the repealed acts continued in existence and their determinations were recognized as awards under the new act.

The various steps and method in the procedure in fixing wages in Victoria are briefly summarized in the following statement:

PROCEDURE IN FIXING MINIMUM WAGE.

1. A resolution of Parliament authorizes one or more special boards for a trade or group of trades.
2. The governor in council establishes the boards.
3. The board may, on its own initiative, make investigation and a determination fixing minimum time and piece rates of wages, maximum hours of labor, minimum rates for overtime and holidays, the proportionate number of apprentices and improvers, and the minimum rates for them, etc.
4. The determination of the board is signed by the chairman and published in the Government Gazette and comes into force at a date fixed by the board, but not within 30 days of the determination.

5. The determination may be suspended, by order of the governor in council, for not exceeding six months, whereupon the board must forthwith reconsider and amend or adhere to its determination. If it adheres to its determination the suspension is revoked by an order effective not later than 14 days.
6. The determination may be brought before the industrial court on appeal by a majority of the representatives of employers or a majority of the representatives of employees on the board or by any employer or group of employers who employ not less than 25 per cent of the total workers in the trade or by 25 per cent or more of the workers in the trade. The minister may at any time refer a determination to the court.
7. In case of appeal or reference the governor in council shall appoint two persons upon nomination of representatives of employers and employees respectively on the special board and these two persons with the president of the court (one of the judges of the supreme court) shall constitute the industrial court.
8. The determination of the court shall be final and without appeal and may not be reviewed or altered by a board without the leave of the court.
9. The determination of the court shall be forwarded to the minister by the registrar and shall be published in the Government Gazette.
10. The validity of a determination of any board may be challenged before the supreme court.

ARBITRATION-COURT SYSTEM.

The first Australian act whereby one party to a labor dispute could be summoned before and presumably made subject, as in proceedings of an ordinary court of law, to the order of a court was the South Australian act of 1894. The principles of this act have been largely followed in other States, but it proved abortive in operation in its own State and in many respects was superseded by the wages-board system which was brought into operation by the act of 1906. Western Australia passed an arbitration act in 1900, repealed and reenacted with amendments in 1902 and 1909, the whole being consolidated in the industrial arbitration act of 1912. The court system was adopted in New South Wales in 1901, and various changes having been subsequently introduced, a consolidation was made in 1912, the system including industrial boards as well as an arbitration court. Queensland, which had been under a wages-board system since 1908, introduced the combined system under the industrial peace act of 1912. The Commonwealth principal act, passed in 1904, applies only to industrial disputes extending beyond the limits of a single State.

INDUSTRIAL UNIONS.

The arbitration act, framed to encourage a system of collective bargaining, to facilitate applications to the court, and to assure to the worker such benefits as may be derived from organization, virtually creates the industrial union. This, except in New South Wales and Western Australia, has been quite distinct from the trade-union; it is not a voluntary association, but rather an organization necessary for the administration of the law. The New South Wales act of 1901 required all trade associations to register as "industrial unions," pre-

scribing the separation of industrial and benefit funds and enforcing strict and proper management, the industrial funds being available in payment of penalties incurred for breaches of the arbitration act. Industrial unions (or "organizations" as they are styled in the Commonwealth act) may be formed by employers or employees. They must be registered and must file annual returns of membership and funds. Before unions of employers are registered, there must be in their employment a minimum number of employees. In New South Wales and Western Australia the minimum is 50; under the Commonwealth act 100. Unions of employees must, in Western Australia, have a membership of 15; by the Commonwealth act a membership of 100 is required. The union rules must contain provisions for the direction of business, and, in particular, for regulating the method of making applications or agreements authorized by the acts. In Western Australia rules must be inserted prohibiting the election to the union of men who are not employers or workers in the trade and the use of union funds for the support of strikes and lockouts; a rule must also be inserted requiring the unions to make use of the act.

INDUSTRIAL AGREEMENTS.

Employers and employees may settle disputes and conditions of labor by industrial agreements which are registered and have the force of awards. Such agreements are enforceable against the parties and such other organizations and persons as signify their intention to be bound by them.

POWERS OF COURT.

Failing agreement, disputes are settled by reference to the court. In the Commonwealth this consists of a judge of the high court. The court may (and on the application of an original party to the dispute must) appoint two assessors at any stage of the dispute. In the States the president of the tribunal (usually a judge of the supreme court) is assisted by members (the number varying under the various acts) chosen by and appointed to represent the employers and employees, respectively.

Cases are brought before the court by either employers or employees. The consent of a majority of a union voting at a specially summoned meeting is necessary to the institution of a case; the Commonwealth act requires the certificate of the registrar that it is a proper case for consideration. The powers of the court are more numerous and varied than those of the Victorian boards; it hears and makes awards upon all matters concerning employers and employees. The breadth of its jurisdiction may be gathered from the Commonwealth definition of "industrial matters," viz:

all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms, and

conditions of employment or nonemployment; and in particular, but without limiting the general scope of this definition, the term includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal or nonemployment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organization, association, or body; and any claim arising under an industrial agreement; and all questions of what is fair and right in relation to any industrial matter having regard to the interest of persons immediately concerned, and of society as a whole.

The object of the court is to prevent and settle industrial disputes; and, when disputes have occurred, to reconcile the parties. The court may fix and enforce penalties for breaches of awards, restrain contraventions of the acts, and exercise all the usual powers of a court of law.

The court is to bring about an amicable agreement, if possible to conciliate and not to arbitrate, and such agreement may be made an award. In order to prevent a matter coming into dispute the president of the arbitration court may convene a compulsory conference under his own presidency. Attendance of persons summoned to attend is compulsory. Provision is made in the recent act whereby, if there is no settlement arrived at in the conference, the president may refer the matter to the court and then arbitrate on it.

There are four ways in which a matter may be brought before the court:

- (a) By the registrar certifying that it is a dispute proper to be dealt with by the court in the public interest.
- (b) By the parties, or one of them, submitting the dispute to the court by plaint in the prescribed manner.
- (c) By a State industrial authority, or the governor in council of a State in which there is no such authority, requesting the court to adjudicate.
- (d) By the president referring to the court a dispute as to which he has held a conference without an agreement being reached.

All parties represented are bound by the award, and also all parties within the scope of a common rule. The court possesses full powers for enforcement of awards.

COMPARATIVE ANALYSIS OF MINIMUM-WAGE LAWS.

LAWS IN FORCE.

Victoria:

Factories and shops act, 1912, enacted December 7, 1912.

Factories and shops act, 1912 (No. 2), enacted December 31, 1912.

Factories and shops acts amendment act, 1914, enacted November 2, 1914.

New South Wales:

Industrial arbitration act, 1912, enacted April 15, 1912.

Minimum wage act, 1908, enacted December 24, 1908 (fixing legislative minimum wage).

Queensland:

Industrial peace act, 1912, enacted December 7, 1912.

Factories and shops act, 1900, enacted December 28, 1900 (fixing legislative minimum wage).

Factories and shops act amendment act, 1908, enacted April 15, 1908 (fixing legislative minimum wage).

South Australia:

Factories act, 1907, enacted December 21, 1907.

Factories act amendment act, 1908, enacted December 23, 1908.

Factories act amendment act, 1910, enacted December 7, 1910.

Industrial arbitration act, 1912, enacted December 19, 1912.

Tasmania:

Wages boards act, 1910, enacted January 13, 1911.

Wages boards act, 1911, enacted September 14, 1911.

Factories act, 1911, enacted January 10, 1912 (fixing legislative minimum wage).

Western Australia: Industrial arbitration act, 1912, enacted December 21, 1912.**Australia (Commonwealth):**

Commonwealth conciliation and arbitration act, 1904, enacted December 15, 1904.

Commonwealth conciliation and arbitration act, 1909, enacted December 13, 1909.

Commonwealth conciliation and arbitration act, 1910, enacted August 29, 1910.

Commonwealth conciliation and arbitration act, 1911, enacted November 23, 1911.

New Zealand:

Industrial conciliation and arbitration act, 1908, enacted August 4, 1908.

Industrial conciliation and arbitration amendment act, 1908, enacted October 10, 1908.

Industrial conciliation and arbitration amendment act, 1910, enacted December 3, 1910.

Industrial conciliation and arbitration amendment act, 1911, enacted October 28, 1911.

Industrial conciliation and arbitration amendment act, 1913, enacted October 3, 1913.

Factories act, 1908, enacted August 4, 1908.

Factories act, 1910, enacted December 3, 1910.

Shops and offices act, 1908, enacted August 4, 1908.

Shops and offices amendment act, 1910, enacted December 3, 1910.

NAME OF TRIBUNALS.**Victoria:**

Court of industrial appeals.

Special boards.

New South Wales:

Court of industrial arbitration.

Industrial boards.

Queensland:

Industrial court.

Industrial boards.

South Australia:

Industrial court.

Wages boards.

Tasmania: Unlimited.**Western Australia: Arbitration court.****Commonwealth of Australia: Court of conciliation and arbitration.****New Zealand: Arbitration court.**

HOW TRIBUNALS ARE BROUGHT INTO EXISTENCE.

Victoria:

Court constituted by governor in council from time to time.

Special boards by governor in council on resolution of Parliament.

New South Wales:

Industrial court (judge) constituted by act.

Industrial boards by the minister on recommendation of industrial court.

Queensland:

Industrial court constituted by the act.

Industrial boards by governor in council on recommendation of court.

South Australia:

Court constituted by act of 1912.

Wages boards by the governor in council on resolution of Parliament.

Tasmania: For the clothing trade, by the act; for other trades, by a resolution of Parliament.

Western Australia: Court constituted by the act.

Commonwealth of Australia: Court constituted by the act.

New Zealand: Court constituted by the act.

INDUSTRIES TO WHICH THE ACTS APPLY.

Victoria: To any process, trade, business, or occupation specified in a resolution.

Government servants are not included.

New South Wales: To industrial groups named in schedule to act, and those added by proclamation. Includes Government servants.

Queensland: To callings specified in schedule to act, and to those added by governor in council.

South Australia: To processes, trades, etc., specified in act, and such others as may be authorized by Parliament.

Tasmania: All trades or groups or parts thereof.

Western Australia: All industrial occupations.

Commonwealth of Australia: Industrial disputes extending beyond limits of any one State or in Federal capital or northern Territories.

New Zealand: All trades.

HOW A TRADE OR INDUSTRY IS BROUGHT UNDER REVIEW.

Victoria: Usually by petition to minister.

New South Wales: Reference by court or minister, or by application to the board by employers or employees.

Queensland: By petitions and representations to industrial registrar.

South Australia: Court—Matters or disputes submitted by minister, registrar, employers, or employees, or by report of wages board. Wages boards by petitions, etc.

Tasmania: By application of parties.

Western Australia: Industrial disputes referred by president or by an industrial union or association.

Commonwealth of Australia: Industrial disputes either certified by registrar, submitted by organization, referred by a State industrial authority or by president after holding abortive compulsory conference.

New Zealand: By application of union or individual employer.

PRESIDENT OR CHAIRMAN OF TRIBUNALS.

Victoria: President of court, one of judges of supreme court appointed by governor in council. Chairman of board appointed by governor in council on nomination of board or, failing that, on nomination by minister.

New South Wales: Court appointed by governor. Chairman of board appointed by minister on recommendation of court.

Queensland: Court appointed by governor in council. Chairman of board any person elected by board. If none elected, appointment is by the governor in council on recommendation of court.

South Australia: Court—President. Wages board, appointed by governor in council on nomination of board or, failing nomination, a stipendiary magistrate.

Tasmania: Any person elected by the board. If none elected, appointment by the governor in council.

Western Australia: President, a judge of the supreme court, appointed by governor.

Commonwealth of Australia: President, appointed by the governor general.

New Zealand: A judge of the supreme court.

NUMBER OF MEMBERS OF TRIBUNALS.

Victoria:

Court, president and one representative each of employers and of employees.

Board, not less than 4 nor more than 10 members and a chairman.

New South Wales:

Court, one judge.

Board, chairman and 2 or 4 other members.

Queensland:

Court, one judge.

Board, not less than 5 nor more than 13 (including chairman).

South Australia:

Court, president only.

Wages board, not less than 5 nor more than 11 (including chairman).

Tasmania: Chairman and not less than 4 nor more than 10.

Western Australia: Three, including president.

Commonwealth of Australia: President only.

New Zealand: Three.

HOW ORDINARY MEMBERS ARE APPOINTED.

Victoria:

Members of court by governor in council on nomination of representatives of employers and employees on special board.

Members of board nominated by minister. But if one-fifth of employers or employees object, representatives are elected by them.

New South Wales: Appointed by minister on recommendation of industrial court.

Queensland: By employers and employees, respectively.

South Australia: By governor on nomination of employers and employees, respectively.

Tasmania: By governor in council on nomination by employers and employees.

Western Australia: Appointed by governor, president directly, and one each on recommendation of unions of employers and workers, respectively.

Commonwealth of Australia: President appointed by governor general from justices of high court.

New Zealand: By the unions of employers and workers, respectively.

DECISIONS—HOW ENFORCED.

Victoria: By factories department in courts of petty sessions.

New South Wales: By registrar and industrial magistrate.

Queensland: By inspectors of factories and shops, department of labor.

South Australia: By factories department.

Tasmania: By factories department.

Western Australia: By arbitration court on complaint of any party to the award or registrar or an industrial inspector.

Commonwealth of Australia: By proceedings instituted by registrar, or by any organization affected or a member thereof.

New Zealand: By arbitration court on complaint of union or inspector of awards.

DURATION OF DECISION.

- Victoria: Until altered by board or court of industrial appeals.
 New South Wales: For period fixed by tribunal, but not more than three years.
 Queensland: Twelve months and thereafter, until altered by board or court.
 South Australia: Until altered by board or by order of industrial court.
 Tasmania: Until altered by board.
 Western Australia: For period fixed by court, not exceeding 3 years, or for 1 year and thenceforward from year to year until 30 days' notice given.
 Commonwealth of Australia: For period fixed by award, not exceeding five years.
 New Zealand: For period fixed by court, not exceeding three years.

APPEAL AGAINST DECISION.

- Victoria: To the court of industrial appeals.
 New South Wales: To industrial court against decision of boards, except those boards presided over by a judge.
 Queensland: To industrial court.
 South Australia: To industrial court.
 Tasmania: To supreme court.
 Western Australia: No appeal except against imprisonment or a fine exceeding £20 (\$97.33).
 Commonwealth of Australia: No appeal. Case may be stated by president for opinion of high court.
 New Zealand: No appeal.

IS SUSPENSION OF DECISION POSSIBLE PENDING APPEAL?

- Victoria: Yes; for not more than 12 months.
 New South Wales: No; except by temporary variation of award by the court.
 Queensland: Yes; for not more than 3 months.
 South Australia: Yes.
 Tasmania: Yes.
 Western Australia: No suspension. Court has power to revise an award after the expiration of 12 months from its date.
 Commonwealth of Australia: No appeal.
 New Zealand: Yes; in case of strikes.

CAN PREFERENCE TO UNIONISTS BE DECLARED?

- Victoria: No.
 New South Wales: Yes.
 Queensland: No.
 South Australia: No.
 Tasmania: No.
 Western Australia: No.
 Commonwealth of Australia: Yes; ordinarily optional, but mandatory if in opinion of court preference is necessary for maintenance of industrial peace or welfare of society.
 New Zealand: Unionism essential.

PROVISION AGAINST STRIKES AND LOCKOUTS.

- Victoria: None.
 New South Wales:
 Strikes, penalty £50 (\$243.33) and preference to unionists canceled.
 Lockouts, penalty £1,000 (\$4,866.50).

Queensland: Strikes £50 (\$243.33), lockouts £1,000 (\$4,866.50), unless notice of intention given to registrar and secret ballot taken in favor. In the case of public utilities compulsory conference also must have proved abortive.

South Australia: Penalty £500 (\$2,433.25) or imprisonment 3 months.

Tasmania: Penalty for strike or lockout on account of any matter in respect to which a board has made a determination, for an organization, £500 (\$2,433.25), for an individual £20 (\$97.34).

Western Australia: Employer or industrial union, £100 (\$486.65); other cases, £10 (\$48.67).

Commonwealth of Australia: Penalty, £1,000 (\$4,866.50).

New Zealand: Penalty—Employer, maximum fine of £500 (\$2,433.25); employee, £25 (\$121.66) unless 14 days' notice is given in writing.

SPECIAL PROVISIONS FOR CONCILIATION.

Victoria: None.

New South Wales:

Special commissioner.

Three conciliation committees for colliery districts.

Registered agreements.

Queensland:

Compulsory conference.

Registered agreements.

South Australia:

Compulsory conference.

Industrial court.

Registered agreements.

Tasmania: None.

Western Australia:

Compulsory conference.

Registered agreements.

Commonwealth of Australia:

Compulsory conference.

Court may temporarily refer to conciliation committee, registered agreements.

New Zealand:

Council of conciliation, with 3 commissioners.

All industrial disputes must be referred to council before they can come before the arbitration court.

OPERATIONS UNDER WAGES BOARDS AND ARBITRATION LAWS.

The grounds usually alleged by the employers in seeking awards or determinations are that their business is hampered by "unfair" competitors, who pay only a sweating wage. Employees allege that they are sweated, or are entitled to an increase in their wages by reason of the prosperity of the trade in which they are engaged or because of an increase in the cost of living.

In Australia and New Zealand the "living wage" is usually accepted as the basis in wage determinations and awards, and above that various rates are fixed for the several occupations coming under the jurisdiction of a board, according to skill. In a number of the States the law gives a definition of the living wage for the guidance of the board or court.¹

¹ For Victoria see p. 220; New South Wales, pp. 146-148; South Australia, pp. 165, 166; Tasmania, pp. 166, 167; Western Australia, p. 167. See also M. B. Hammond, *Judicial interpretation of the minimum wage in Australia*, American Economic Review, June, 1913.

In New South Wales there were on April 30, 1914, 208 industrial boards in existence. Awards of boards and of the court in force numbered 260, of which 65 were awards of the industrial court varying previous awards of boards.

In Victoria there were on April 30, 1914, 131 wages boards in existence, affecting about 150,000 employees. The number of determinations in force was 129. All the boards authorized, with the exception of three, had met for the purpose of fixing wages, hours, etc. The court of industrial appeals in Victoria had heard 12 appeals from determinations of wages boards. In one case the decision was upheld; in 10 cases decisions were reversed or amended; in one case the board, unable to come to a determination, referred the matter to the court, which exercised its power of fixing a proper wage where the average wage paid by employers did not afford a living wage. Of these decisions three were in force on April 30, 1914, the others having been superseded by amended determinations. The court also heard an appeal for modification of its determination with respect to a trade, and decided to modify such determination by reducing the working hours and increasing the wages in certain cases.

The number of industrial boards authorized in Queensland since the acts came into force was on April 30, 1914, 92. The number of employees affected by awards in force at that date is not available, but the number affected by awards in effect on June 30, 1914, was given as 90,000.¹ In 76 cases awards were in force, but 4 had been varied on appeal to the industrial court. Under the industrial peace act, 1912, all wages boards established continued in existence, and their determinations were recognized. In South Australia there were on April 30, 1914, 51 trades under boards, with about 25,000 employees. Fifty-four determinations were in force, including six made by the industrial court, in lieu of wages boards, on the minister for industry reporting the inability to appoint boards as authorized or the failure of the constituted boards to discharge the duties required under their appointment. In Western Australia awards had been made for 36 industrial unions, but only 18 remained in force on April 30, 1914; 19 expired between December 4, 1912, and the end of 1913, and had not been reviewed by the court at the latter date. The wages-board system was inaugurated in Tasmania in 1911. Up to April 30, 1914, resolutions authorizing the appointment of 23 boards were carried in Parliament, and 21 boards had made determinations. Two other boards had commenced work, but had not issued their determinations. The number of Commonwealth conciliation and arbitration court awards in force on April 30, 1914, was 17.

¹ Queensland. Department of Labour. Report of the Director of Labour and Chief Inspector of Factories and Shops for the year ended June 30, 1914, p. 2.

BOARDS FOR THE REGULATION OF WAGES AND HOURS AND CONDITIONS OF LABOR
AUTHORIZED AND CONSTITUTED, AWARDS, DETERMINATIONS, AND AGREEMENTS
IN FORCE, APR. 30, 1914.

[Source: Labour Bulletin of the Commonwealth Bureau of Census and Statistics, Melbourne, Australia, No. 5, January-March, 1914, p. 67.]

Particulars.	Commonwealth.	New South Wales.	Victoria.	Queensland.	South Australia.	Western Australia.	Tasmania.	Total.
1. Boards authorized, constituted, and in force:								
Boards authorized.....		¹ 217	137	92	56		23	525
Boards constituted.....		¹ 224	132	81	51		21	509
Boards dissolved or superseded ²		16	1					17
In existence.....		¹ 208	131	81	51		21	492
2. Boards constituted which have made awards or determinations:								
Boards which had made or varied awards or determinations.....		147	127	81	48		19	422
Boards which had not made any award or determination.....		61	4		3		2	70
3. Awards and determinations in force ³	17	260	129	76	54	18	21	575
4. Scope of State awards and determinations: ³								
Applying to the whole State.....		23	6	2			15	46
Applying to metropolitan area only.....		68		26	54	13	1	162
Applying to metropolitan and country towns.....		44	109	4		1	5	163
Applying to country areas.....		125	14	44		4		187
5. Commonwealth awards in force in each State.....		10	14	12	13	6	10	
6. Industrial agreements in force.....	233	71		5	13	93		416
7. Commonwealth agreements in force in each State.....		109	108	45	39	33	39	

¹ Excluding special demarcation boards.

² Boards constituted and subsequently dissolved or superseded. In New South Wales 16 boards were dissolved owing to alteration in the sectional arrangement of industries and callings. In Victoria 1 board was superseded by 3 boards.

³ In addition, 12 awards and determinations had been made, but had not come into operation on the 30th of April, 1914. Of that number 7 were in Victoria, 4 in Queensland, and 1 in South Australia. The figures are exclusive of awards and determinations which had expired by effluxion of time and had not been renewed on the 30th of April, 1914.

The total number of boards authorized in the five States in which the board system is in force was 525, the total number constituted being 509, of which 17 had been dissolved or superseded. The number of boards in existence at the end of April, 1914, was accordingly 492, of which 422 had either made original awards or determinations, or varied existing awards or determinations, and 70 had not made any award or determination. The difference between the number of boards in existence and the number which had made awards or determinations is accounted for mainly by the fact that in New South Wales a number of boards constituted under the act of 1912 had not made awards, owing to existing awards made under the act of 1908 being still in force. This is shown in the line, "awards and determinations in force," in which it may be seen that the total number in force (including awards made by the Commonwealth and Western Australia arbitration courts) was 575. In New South Wales the number of awards in force includes 90 awards under the act of 1908. This leaves 170 awards in force made by 147 boards under the new act. In explanation of the fact that the num-

ber of awards in force in this State under the new act exceeds the number of boards in existence, it may be mentioned that several of the boards have made separate awards for different districts and branches of industry.

Of the total number of awards and determinations in force on April 30, 1914, 82 were the result of awards made by industrial courts (either original or appellate jurisdiction), in addition to the 17 Commonwealth and 18 Western Australia awards.

Of the Commonwealth awards there are seven in connection with the shipping industry and the award affecting postal electricians which apply to each of the six States. There are four awards which apply to five States, two of which apply to four States, one to three States, and two to two States.

The total number of awards, determinations, and agreements in force under the various acts at the end of April, 1914, was 990, comprising 575 awards and determinations and 415 industrial agreements.¹

The total number of individual awards and determinations which came into force during 1913 was 270 (264 State and 6 Commonwealth). The number of industrial agreements registered¹ during that year was 165 (56 State and 109 Commonwealth), making a total for the Commonwealth of 435 awards, determinations, and agreements, affecting wages, hours, or other conditions, which came into force in 1913. This constitutes no less than 44 per cent of the total number (997) of awards, determinations, and agreements in force at the end of 1913.

EFFECT OF ACTS.

The question whether the operation of the acts has bettered the monetary position of the operative may be answered in the affirmative. Starting from the lowest point, the provision of an absolute minimum wage per week has stopped one form of gross sweating, that of employing apprentices and learners without payment. Another case is that of the "white workers" and dressmakers; with these the lowest grade was the "outworkers," who were pieceworkers. In some branches of the Victorian trade, in 1897, the wages paid to outworkers for all classes of certain goods were only from one-third to one-half the wages paid in the factories for low-class production of the same line of stuff. By working very long hours the outworkers could earn 10s. (\$2.43) per week. The average wage of females in the clothing trade in 1897 was 10s. 10d. (\$2.63) per week; there were, however, in that year 4,164 females receiving less than £1 (\$4.87) per week, and their average was 8s. 8d. (\$2.11). It was almost a revolution when a minimum wage of 16s. (\$3.89) per week of 48 hours was fixed by the board, when pieceworkers' rates were

¹ Including agreements under section 24 of the Commonwealth conciliation and arbitration act and under section 7 of the Queensland industrial peace act, 1912.

fixed to insure a similar minimum, and when outworkers were placed on the level of pieceworkers. Many employers refused to continue to give out work and took the workers into the factory on time work. The wages boards have since fixed the minimum wage per week in the industries mentioned to be: Dressmakers, 21s. 6d. (\$5.23); shirt workers, 22s. 6d. (\$5.47); and underclothing makers, 20s. (\$4.87). As a result, it has been found by special investigation made in November, 1912, in regard to wages in manufacturing industries, that the average wages for all female workers in Victoria engaged at dress-making and millinery was 17s. 11d. (\$4.36), and for shirt workers, white workers (underclothing), etc., 19s. 1d. (\$4.64).¹

The period since the beginning of minimum-wage legislation in New Zealand and Australia has been a period of steady growth of industry, not checked, so far as is apparent, by the effect of wage regulation. In New Zealand since 1894, the date of the conciliation and arbitration act, the reports of the Department of Labor have each year shown an increase in the number of factories, and an increase in the number of factory employees has been recorded in each year except two, the increase to 1913 amounting to 193 per cent.² In Victoria an increase both in number of factories and of factory employees has been recorded each year since 1896, the increase in employees between 1896 and 1913 amounting to 171 per cent.³ In New South Wales the increase in the number of persons employed in manufacturing between 1901, the date of the first wage-regulating law, and 1912 was 74 per cent (62 per cent for males and 135 per cent for females).⁴

The extent to which wage changes are effected by wages-board determinations, by court awards, and by other methods may be seen from the following record for the year 1913:

METHODS BY WHICH CHANGES OF WAGES WERE EFFECTED IN THE VARIOUS AUSTRALIAN STATES DURING 1913.⁵

[Source: Commonwealth of Australia, Bureau of Census and Statistics. Labour and Industrial Branch. Report No. 5. December, 1914, pp. 68 and 69.]

Methods by which changes were effected.	Number of changes.	Number of work-people affected.
New South Wales:		
Voluntary action of employers.....		
Direct negotiations.....	10	364
Negotiations, intervention, or assistance of third party.....	1	2
Award of court under Commonwealth act.....	2	1,507
Agreement registered under Commonwealth act.....	6	1,090
Award under State act.....	115	85,909
Registered agreement under State act.....	15	746
Total.....	149	89,618

¹ See also page 131.

² Twenty-third Annual Report of the New Zealand Department of Labor, 1914, p. 7.

³ Report of the Victoria Chief Inspector of Factories and Shops for the year ended Dec. 31, 1913, p. 5.

⁴ Official Yearbook of New South Wales, 1913, p. 889.

⁵ In this table an industrial award or agreement under the Commonwealth conciliation and arbitration act is counted as one change only, although such award or agreement may be operative in more than one State.

METHODS BY WHICH CHANGES OF WAGES WERE EFFECTED IN THE VARIOUS AUSTRALIAN STATES DURING 1913—Concluded.

Methods by which changes were effected.	Number of changes.	Number of work-people affected.
Victoria:		
Voluntary action of employers	1	12,000
Direct negotiations	10	1,542
Negotiations, intervention, or assistance of third party	2	75
Award of court under Commonwealth act	3	1,958
Agreement registered under Commonwealth act	9	1,707
Determination under State act	56	31,972
Total	81	49,254
Queensland:		
Voluntary action of employers	7	2,320
Direct negotiations	2	235
Negotiations, intervention, or assistance of third party	6	303
Award of court under Commonwealth act	24	13,014
Agreement registered under Commonwealth act	2	773
Registered agreement under State act		
Total	41	16,645
South Australia:		
Voluntary action of employers	1	20
Direct negotiations	1	24
Negotiations, intervention, or assistance of third party	2	359
Award of court under Commonwealth act	5	247
Agreement registered under Commonwealth act	12	2,894
Award under State act	4	1,030
Registered agreement under State act		
Total	26	4,574
Western Australia:		
Voluntary action of employers	1	112
Direct negotiations	1	20
Negotiations, intervention, or assistance of third party	1	345
Award of court under Commonwealth act	15	2,559
Agreement registered under Commonwealth act		
Award under State act		
Registered agreement under State act		
Total	20	3,036
Tasmania:		
Voluntary action of employers	1	11
Direct negotiations	2	90
Negotiations, intervention, or assistance of third party	3	316
Award of court under Commonwealth act	11	20
Agreement registered under Commonwealth act	3	2,568
Determination under State act		
Total	12	3,005
Commonwealth:		
Voluntary action of employers	2	12,011
Direct negotiations	30	4,336
Negotiations, intervention, or assistance of third party	4	101
Award of court under Commonwealth act	3	4,487
Agreement registered under Commonwealth act	24	3,387
Award or determination under State acts	213	136,702
Registered agreement under State acts	36	5,108
Total	312	166,132

VICTORIA.

HISTORY OF LEGISLATION.

It is now more than 18 years since the wages-board system came into effect in Victoria, and it seems to be fully established and generally accepted by both employers and employees. In the early years of the system's operations, however, every step in the extension of the principle was obstinately fought, and many times the very

existence of the system was at stake. The first law when enacted, July 28, 1896, was a temporary measure, to be in force to January 1, 1900, unless Parliament was in session, in which case it was to lapse at the end of the session unless reenacted. It was reenacted February 20, 1900, to become effective May 1, 1900, but again as a temporary measure for two years or until the end of the session of Parliament, and a royal commission was created June 18, 1900, to study the subject. This law lapsed upon the end of the session of Parliament September 10, 1902. By the factories and shops continuation act of 1902 (December 5, 1902) the law was revived, to continue in force until October 1, 1903. In 1903 the law was again reenacted, to continue in force until December 31, 1905. On October 6, 1905, before the expiration of this act, the law was again reenacted and was this time made permanent. Since 1905 there have been no fundamental changes in the act, and in 1912 the existing legislation was consolidated, with some slight amendments, in the factories and shops act of 1912.¹ Two amending acts have since been passed, dated December 31, 1912, and November 2, 1914, but not making any important changes.

When the first wages boards were authorized in Victoria under the act of 1896, the act was intended as a temporary measure to be applied to six specially sweated trades. These were:

Bootmaking.

Baking, employing mainly men.

Clothing.

Shirts.

Underclothing, employing mainly women.

Furniture, in which the employment of Chinese was extremely important.

When the law was reenacted in 1900, 21 additional special boards were provided for, as follows:

Brickmakers.

Butchers.

Carriage.

Cigar makers.

Confectioners.

Coopers.

Engravers.

Fellmongers.

Jewelers.

Jam.

Millet-broom makers.

Pastry cooks.

Plate glass.

Pottery.

Printers.

Saddlery.

Stonecutters.

Tanners.

Tinsmiths.

Woodworkers.

Woolen.

The successive additions of special boards by later acts of the Victorian Parliament are of interest as showing the gradual extension of the system of wage boards in practically all the industries of Victoria.

¹ A full account of the parliamentary contest over wages-board legislation in Victoria is given by Prof. Hammond in an article on "Wages boards in Australia: I. Victoria" in the *Quarterly Journal of Economics*, November, 1914.

Special boards received parliamentary authorization, as follows:

In 1901, 11 boards:

Aerated-water makers.
Artificial manure.
Bedstead makers.
Brass workers.
Brewers.
Brushworkers.

Iron molders.
Leather-goods makers.
Maltsters.
Oven makers.
Wickerworkers.

In 1903, 1 board: Dressmakers.

In 1906, 11 boards:

Agricultural implement makers.
Cardboard-box makers.
Candle makers.
Cycle trade.
Farriers.
Flour millers.

Milliners.
Paper-bag makers.
Soap and soda makers.
Starch makers.
Waterproof clothing.

In 1907, 2 boards:

Glassworkers.

Picture-frame makers.

In 1908, 4 boards:

Bread carters.
Hairdressers.

Ice makers.
Wireworkers.

In 1909, 16 boards:

Carpenters.
Carriage builders.
Carters.
Drapers.
Electroplaters.
Grocers.
Ham and bacon curers.
Hay, chaff, coal, and wood dealers.

Men's clothing.
Organ builders.
Painters.
Plumbers.
Polish makers.
Quarrymen.
Rubber goods.
Tuck pointers.

In 1910, 20 boards:

Boiler makers.
Boot dealers.
Bricklayers.
Coal miners.
Electrical installation.
Engineering.
Factory engine drivers.
Gold miners.
Hardware makers.
Hotel employees.

Lift attendants.
Marine-store dealers.
Mining-engine drivers.
Plasterers.
Slaughterers for export.
Stationers.
Tea packers.
Tilers.
Undertakers.
Watchmakers.

In 1911, 12 boards:

Asphalters.
Cordage.
Commercial clerks.
Country-shop assistants.
Furniture dealers.
Gardeners.

Grocers' sundries.
Livery stable.
Night watchmen.
Tramway.
Tie makers.
Wholesale grocers.

In 1912, 19 boards:

Bag makers.	Horsehair.
Billposters.	Meat preservers.
Biscuit.	Motor drivers.
Builders' laborers.	Nail makers.
Butter.	Office cleaners.
Dyers and clothes cleaners.	Storemen, packers, and sorters.
Electrical supply.	Straw hat.
Felt hatters.	Tentmakers.
Fibrous plasterers.	Timber fellers.
Gas meter.	

In 1913, 2 boards:

Paper.	Photographers.
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Under an authorization contained in the principal act, the governor in council in 1911 appointed 8 boards:

Chaff cutters.	| Country printers.
Country agricultural implements.	| Country saddlery.
Country flour.	| Country woodworkers.
Country fuel and fodder.	| Fuel and fodder.

and in 1912, 1 board: Aerated-water carters.

There were on April 30, 1914, 137 special boards existing or authorized, affecting about 150,000 employees. Of these boards 131 were in existence and 129 determinations were in force.

MODE OF CONSTITUTING WAGES BOARDS AND MAKING MINIMUM-WAGE DETERMINATIONS.¹

Before a special board is constituted, it is necessary that a resolution in favor of such a course should be carried in both houses of the legislature. It is usual for the minister administering the factories act to move that such a resolution be passed. The minister may be induced to adopt such a course by representations made by either employers or employees, or both, or by the reports of the officers of the department.

The reasons alleged by employers for desiring a board are, usually, unfair competition; and those by employees, low wages, and often the employment of excessive juvenile labor. If the minister is satisfied that a case has been made out, he moves the necessary resolution in Parliament, and when such resolution has been carried, an order in council is passed constituting the board.

Once a resolution has been passed or a board appointed the minister through the governor in council has full power to group or divide trades, to adjust the powers of different boards by taking from one and adding to another, to define the parts of the State over which any determination shall operate, and generally to administer so as to secure the greatest measure of benefit.

The order constituting the board indicates the number of members. The number must not be less than four or more than ten.

The minister then invites, in the daily press, nominations for the requisite number of representatives of employers and employees. These representatives must be, or have been, employers or em-

¹ Victoria. Report of the Chief Inspector of Factories, Workrooms, and Shops for the year ended Dec. 31, 1911. Melbourne, 1912, pp. 4 and 5.

ployees, as the case may be, actually engaged in the trade to be affected. The full names and addresses of persons willing to act should be sent in with particulars as to their connection with the trade during the three years last past. Where there are associations of employers or employees, more than the necessary number of nominations are often received. In such case, the minister selects from the persons whose names are sent in the necessary number to make up a full board.

The names of persons so nominated by the minister are published in the Government Gazette, and unless within 21 days one-fifth of the employers, or one-fifth of the employees, as the case may be, forward a notice in writing to the minister that they object to such nominations, the persons so nominated are appointed members of the board by the governor in council.

If one-fifth of the employers or employees object to the persons nominated by the minister—and they must object to all the nominations, and not to individuals—an election is held. The chief inspector conducts such elections, the voting is by post, the ballot papers being forwarded to each elector.

Within a few days of their appointment the members are invited to meet in a room at the office of the chief inspector of factories, and a person (always a Government officer and usually an officer of the chief inspector's department) is appointed to act as secretary.

The members must nominate a chairman within 14 days of the date of their appointment, but if they can not agree to a chairman, he is appointed by the governor in council.

The times of meeting, the mode of carrying on business, and all procedure is entirely in the hands of the board, whose powers are defined in the factory acts.

Vacancies in special boards are filled on the nomination of the minister without any possibility of either employer or employee objecting.

The result of the labors of a board is called a "determination," and each item of such determination must be carried by a majority of the board.

The chairman is a member of the board. His function is usually confined to conducting the proceedings. He does not exercise his vote except in cases where the board is equally divided, when his casting vote determines the question at issue.

When a determination has been finally made, it must be signed by the chairman and forwarded to the minister of labor. The board fixes a date on which the determination should come into force, but this date can not be within 30 days of the last fixing of a price or rate of pay. If the minister is satisfied the determination is in form, and can be enforced, it is duly gazetted.

In the event of the minister considering that any determination may cause injury to trade, or injustice in any way whatever, he may suspend same for any period, not exceeding six months, and the board is then required to reconsider the determination. If the board does not make any alteration, and is satisfied that the fears are groundless, the suspension may be removed by notice in the Government Gazette.

Provision is made by which either employers or employees may appeal to the court of industrial appeals against any determination of a board. This court consists of any one of the judges of the

supreme court as president, and two other persons appointed for the occasion by the governor in council on nomination of the representatives of the employers and employees respectively on the special board from whose decision appeal is made.¹

An appeal may be lodged (a) by a majority of the representatives of the employers on the special board; (b) a majority of the representatives of employees on the special board; (c) any employer or group of employers, who employ not less than 25 per cent of the total number of workers in the trade to be affected; or (d) 25 per cent of the workers in any trade.

The court has all the powers of a special board, and may alter or amend the determination in any way it thinks fit. The decision of the court is final, and can not be altered by the board, except with the permission of the court, but the court may, at any time, review its own decision.

The minister has power to refer any determination of a board to the court for its consideration, if he thinks fit, without appeal by either employer or employee.

The decision of the court is gazetted in the same way as the determination of the board, and comes into force at any date the court may fix.

The determinations of the board and the court are enforced by the factories and shops department, and severe penalties are provided for breaches of determinations.

No prosecution for any offense against any of the factories acts, or for any breach of any determination, can be brought except through the department.

TYPICAL AWARDS OF WAGE BOARDS.

The scope and method of the determinations of the Victorian boards may be best seen from an examination of typical awards. Several of these are given in full in the following pages:²

WAGES PER WEEK OF 48 HOURS FIXED BY BRASS WORKERS' BOARD (IN FORCE NOV. 7, 1913).

	Minimum wage.	Apprentices (male or female).	Improvers (female). ³
Brass molders.....	57s. (\$13.87).	14 years, 6s. (\$1.46).	1st year's experience, 6s. (\$1.46).
Brass finishers.....	57s. (\$13.87).	15 years, 7s. 6d. (\$1.83).	2d year's experience, 8s. (\$1.95).
Brass polishers.....	50s. (\$12.17).	16 years, 10s. (\$2.43).	3d year's experience, 10s. (\$2.43).
Core makers, male.....	51s. (\$12.41).	17 years, 12s. 6d. (\$3.04).	4th year's experience, 12s. 6d. (\$3.04).
Core makers, female.....	30s. (\$7.30).	18 years, 15s. (\$3.65).	5th year's experience, 15s. (\$3.65).
Dressers, i. e., persons who remove sand faults in castings and superfluous metal caused by jointing, gating, and venting, or who pickle castings.	45s. (\$10.95).	19 years, 20s. (\$4.87).	6th year's experience, 20s. (\$4.87).
Furnace men.....	47s. 6d. (\$11.56).	20 years, 30s. (\$7.30).	7th year's experience, 25s. (\$6.08).
Persons working on ships, 1s. (24 cents) per day extra as "dirt money."		Proportion (within any factory or place): One apprentice to every 3, or fraction of 3, workers receiving at wage rates or piecework prices not less than 45s. (\$10.95).	Proportion (within any factory or place): One improver (male or female) to each person receiving at wage rates or piecework prices not less than 45s. (\$10.95).

¹ This provision was made in act of Nov. 2, 1914.

² Repr't of the Chief Inspector of Factories and Shops for the year ended Dec. 31, 1913, Appendix D.

³ Wages of males same as apprentices.

Time of beginning and ending work:

Time of beginning, 7.30 a. m.; time of ending, 12.15 p. m. on the day on which the half holiday is observed.

Time of beginning, 7.30 a. m.; time of ending, 5.30 p. m. on the other working days of the week.

Overtime.—That the following rates shall be paid for all work done:

(a) Within the hours fixed in excess of 48 hours in any week—

(1) In connection with the repairing of the employer's machinery or tools, time and a quarter.

(2) All other work—

First 2 hours, time and a quarter.

Thereafter, time and a half.

(b) Outside the hours fixed—

In connection with the repairing of the employer's machinery or tools, time and a quarter.

All other work—

(i) Between midnight and 7.30 a. m., time and a half.

(ii) Between 12.15 p. m. and 2.15 p. m. on the day on which the half holiday is observed, time and a quarter.

(iii) Between 5.30 p. m. and 8 p. m. on the other working days of the week—

First 2 hours' work, time and a quarter.

Thereafter, time and a half.

(iv) Between 2.15 p. m. and midnight on the day on which the half holiday is observed, time and a half.

(v) Between 8 p. m. and midnight on the other working days of the week, time and a half.

Sundays and public holidays.—All work done on Sundays, Good Friday, Easter Monday, Foundation Day, Eight Hours Day, Christmas Day, Boxing Day, and New Year's Day shall be paid for at the rate of double time, but if any other day be by act of Parliament or proclamation substituted for any of the above holidays, the special rate shall only be payable for work done on the day so substituted.

Piecework.—This board has determined that the employer may fix piecework prices to be based on the wage rates determined.

WAGES PER WEEK OF 48 HOURS FIXED BY BOOT TRADE BOARD (IN FORCE
JAN. 1, 1913).

	Minimum wage.	Apprentices.	Improvers. ¹
MALES.		<i>Males.</i>	<i>Males.</i>
Adult males employed wholly or partly in manufacturing boots, shoes, and slippers of every description, either by hand or machinery.	54s. (\$13.14).	1st year, 7s. 6d. (\$1.83). 2d year, 12s. 6d. (\$3.04). 3d year, 17s. 6d. (\$4.26). 4th year, 22s. 6d. (\$5.47). 5th year, 27s. 6d. (\$6.69). 6th year— 1st 6 months, 32s. 6d. (\$7.91). 2d 6 months, 35s. (\$8.52). Proportion: One apprentice to every 3, or fraction of 3, male workers employed and receiving not less than 54s. (\$13.14), or earning at piecework rate not less than 54s. (\$13.14).	Proportion: One improver to 10, or over 10, male workers employed and receiving not less than 54s. (\$13.14), or earning at piecework rate not less than 54s. (\$13.14).
Persons under 21 years of age (other than apprentices or improvers) employed solely on errands, sweeping, last carrying, sorting, and heel-nail feeding—			
Under 15 years of age....	7s. (\$1.70).		
Over 15 and under 16 years of age.....	9s. (\$2.19).		
Over 16 years of age.....	54s. (\$13.14).		
FEMALES.		<i>Females.</i>	<i>Females.</i>
Females employed clicking (but not skiving or trimming) insides or outsides of uppers, or stuff cutting, stuff fitting, or preparing formakers or finishing (but not ironing and sizing of uppers or socking).	54s. (\$13.14).	1st year, 7s. 6d. (\$1.83). 2d year, 10s. (\$2.43). 3d year, 12s. 6d. (\$3.04). 4th year, 16s. (\$3.99). Proportion: One female apprentice to every 3 or fraction of 3 female workers employed and receiving not less than 25s. 6d. (\$6.20), or earning at piecework rate not less than 25s. 6d. (\$6.20).	Proportion: Two female improvers to every female worker employed and receiving not less than 25s. 6d. (\$6.20), or earning at piecework rate not less than 25s. 6d. (\$6.20).
Females with four years' experience and over operating wax-thread machines.	32s. 6d. (\$7.91).		
All other females with four years' experience and over.	25s. 6d. (\$6.20).		

¹ Wages same as apprentices.

Time of beginning and ending work:

Time of beginning, 7.45 a. m.; time of ending, 12.15 p. m. on Saturday.

Time of beginning, 7.45 a. m.; time of ending, 6 p. m. on the other working days of the week.

Overtime.—Any male employee over the age of 16 years who, within the hours of commencing and ending work as fixed in this determination, works in any week in excess of 48 hours shall be paid for such extra time at the rate of 3d. (6 cents) per hour in addition to the wage rate set forth in this determination.

Any person who is engaged outside the hours specified in this determination as the time of beginning and ending work upon each day shall be paid for such overtime at the rate of 3d. (6 cents) per hour in addition to the wage rate set forth in this determination in the case of adult males, and at the rate of time and a half in the case of females and boys under 16 years of age.

Special rates for public holidays.—All work done on Good Friday, Easter Monday, or the days on which New Year's Day, Eight Hours Day, Christmas Day, and Boxing Day are observed as public holidays, shall be paid for at the rate of double time.

Piecework.—A schedule of piecework prices has been fixed by the board.

WAGES PER WEEK OF 44 HOURS FIXED BY **BRICKLAYERS' BOARD** (IN FORCE FROM JAN. 5, 1914).

	Minimum wage.	Apprentices.	Improvers.
Foreman bricklayer in charge of three or more employees.	77s. (\$18.74).	1st year, 10s. (\$2.43). 2d year, 17s. 6d. (\$4.26).	1st 6 months, 10s. (\$2.43). 2d 6 months, 15s. (\$3.65).
Bricklayers employed where the artificial temperature is 130° F. or over.	132s. (\$32.12).	3d year, 30s. (\$7.30). 4th year, 35s. (\$8.52). 5th year, 45s. (\$10.95).	2d year, 23s. 10d. (\$5.80). 3d year, 36s. 8d. (\$8.92). 4th year, 49s. 6d. (\$12.04). 5th year, 60s. 6d. (\$14.72).
Bricklayers employed on sewerage work, drainage work, or underground work not connected with building construction.	77s. (\$18.74).	Proportion: One apprentice to every 3 workers or fraction thereof receiving not less than the minimum wage of 71s. 6d. (\$17.40).	Proportion: One improver to every 4 workers or fraction thereof receiving not less than the minimum wage of 71s. 6d. (\$17.40).
Bricklayers employed on alterations or repairs to boilers, flues, ovens, furnaces, or retorts.	77s. (\$18.74).		
All other bricklayers.....	71s. 6d. (\$17.40).		

Definitions.—Whenever occurring, the following expressions shall have the meanings hereby assigned to them (that is to say):

(a) Metropolitan center shall mean the Melbourne general post office;

(b) Any other center shall mean the respective town halls of Ballarat, Bendigo, Geelong, and Warrnambool.

And all distances from a center shall be computed by the radius.

Allowances.—The following extra rates shall be paid to any persons wheresoever employed—

1. (a) On all work distant from the metropolitan center 3 miles and up to 6 miles, $\frac{1}{2}$ d. (1 cent) per hour extra.

(b) On all work distant from the metropolitan center over 6 miles and up to 16 miles, 1d. (2 cents) per hour extra.

2. (a) On all work distant from any other center 3 miles and up to 6 miles, $\frac{1}{2}$ d. (1 cent) per hour extra.

(b) On all work distant from any other center over 6 miles and up to 8 miles, 1d. (2 cents) per hour extra.

Provided always that where the locality of the work is nearer to the employee's residence than to the center, all distances shall be reckoned from the employee's residence, which in such case shall be deemed to be the center.

Time of beginning and ending work.—The time of beginning and ending work for persons (other than those employed on sewerage work, drainage work, or underground work not connected with building construction) shall be—

Time of beginning, 7.45 a. m.; time of ending, 5.15 p. m. on each of five days in the week.

Time of beginning, 7.45 a. m.; time of ending, 12 noon on the other working day of the week on which the half holiday is usually observed.

Overtime.—(A) Any person (other than a person employed on sewerage work, drainage work, or underground work not connected with building construction) who is engaged outside the hours specified in this determination as the time of beginning and ending work upon each day, shall be paid for such overtime as follows, namely:

- (a) On the weekly half holiday—
Between 12 noon and 5 p. m., time and a half.
And thereafter until midnight, double time.
- (b) On the other working days of the week—
Between 5.15 p. m. and 10.15 p. m., time and a half.
And thereafter until midnight, double time.
- (c) Between midnight and 7.45 a. m., double time.

(B) Any person (other than a person employed on sewerage work, drainage work, or underground work not connected with any building construction) who, within the hours of commencing and ending work as fixed in this determination, works in any week for any time in excess of 44 hours shall be paid for such extra time at the rate of time and a quarter.

(C) Any person employed on sewerage work, drainage work, or underground work not connected with building construction who works in any week for any time in excess of 44 hours shall be paid for such extra time at the rate of time and a quarter.

Special rates for Sundays and public holidays.—All work done on Sundays, Good Friday, and Easter Monday, 26th January (Foundation Day), 21st April (Eight Hours Day), Christmas Day, Boxing Day, and New Year's Day shall be paid for at the rate of double time; but if any other day be by act of Parliament or proclamation substituted for any of the above-named holidays, the special rate shall be payable only for the day so substituted.

Piecework.—A schedule of piecework prices has been fixed by the board.

WAGES PER WEEK OF 48 HOURS FIXED BY CARDBOARD-BOX TRADE BOARD (IN FORCE MAR. 3, 1914).

	Minimum wage.	Apprentices.			Improvers. ¹
MALES.					
Guillotine cutters...	60s. (\$14.60).	<i>Year.</i>	<i>Males.</i>	<i>Females.</i>	Number (within any place): Three male improvers to the first male worker, and thereafter 1 male improver to each additional male worker receiving not less than 48s. (\$11.68); 2 female improvers to every 5 or fraction of 5 female workers receiving not less than 23s. (\$5.60).
Cloth or paper cutters.	60s. (\$14.60).	1st	10s. (\$2.43)	7s. 6d. (\$1.83)	
		2d	12s. 6d. (\$3.04)	12s. 6d. (\$3.04)	
		3d	15s. (\$3.65)	15s. (\$3.65)	
Carton setters.....	58s. (\$14.11).	4th	20s. (\$4.87)	17s. 6d. (\$4.26)	
Carton cutters.....	52s. 6d. (\$12.77).	5th	25s. (\$6.08)	20s. (\$4.87)	
All others.....	48s. (\$11.68).	6th	30s. (\$7.30)	25s. (\$6.08)	
		7th	36s. (\$8.76)		
FEMALES.					
Guillotine cutters...	60s. (\$14.60).	Number (within any place): One male apprentice to every 3 or fraction of 3 male workers receiving not less than 48s. (\$11.68); 1 female apprentice to every 3 or fraction of 3 female workers receiving not less than 23s. (\$5.60).			
Cloth or paper cutters.....	60s. (\$14.60).				
Cloth-box makers...	27s. 6d. (\$6.69).				
Paper-box makers...	25s. (\$6.08).				
All others.....	23s. (\$5.60).				

¹ Wages same as apprentices.

Overtime.—Any employee who in any week works for any time in excess of 48 hours shall be paid for such extra time at the rate of time and a third.

Special rates.—Double time shall be the special rate for all work done on Sundays, New Year's Day, 26th January, 21st April, Good Friday, Easter Monday, Christmas Day, and Boxing Day, but if any other day be by act of Parliament or proclamation substituted for any of the above-named holidays, the special rate shall only be payable for work done on the day so substituted.

Piecework.—A schedule of piecework prices has been fixed by the board.

**WAGES PER WEEK OF 48 HOURS FIXED BY CONFECTIONERS' BOARD (IN FORCE
MAY 7, 1914).**

	Minimum wage.	Apprentices.		Improvers. ¹
		<i>Year's experience.</i>	<i>Males.</i>	<i>Females.</i>
Confectioners.....	57s. 6d. (\$13.99).	1st	10s. (\$2.43)	10s. (\$2.43)
Head storeman having not less than three storemen under his control.	50s. (\$12.17).	2d	12s. 6d. (\$3.04)	12s. 6d. (\$3.04)
		3d	17s. 6d. (\$4.26)	15s. (\$3.65)
Other storemen.....	45s. (\$10.95).	4th	22s. 6d. (\$5.47)	17s. 6d. (\$4.26)
Bulk packers.....	45s. (\$10.95).	5th	30s. (\$7.30)	20s. (\$4.87)
Males over 21 years of age, without previous experience:		Proportion (by any employer): One male apprentice to every 3 or fraction of 3 male workers receiving not less than 30s. (\$7.30); 1 female apprentice to every 3 or fraction of 3 female workers receiving not less than 14s. (\$3.41).		
1st year.....	30s. (\$7.30).			
2d year.....	32s. (\$7.79).			
3d year.....	35s. (\$8.52).			
4th year.....	40s. (\$9.75).			
And thereafter.....	45s. (\$10.95).			
All other males.....	45s. (\$10.95).			
Females over 21 years of age without previous experience:				
1st year.....	14s. (\$3.41).			
2d year.....	16s. (\$3.89).			
3d year.....	18s. (\$4.38).			
4th year.....	20s. (\$4.87).			
And thereafter.....	22s. 6d. (\$5.47).			
All other females.....	22s. 6d. (\$5.47).			

¹ Wages same as apprentices.

Juvenile workers.—Persons under 21 years of age (other than apprentices or improvers) employed at nailing up boxes, tying up boxes, bottles, tins, or parcels, tinning up, boxing, or packing under 30 pounds in weight; wrapping; packing stock boxes or tins or bottles; labeling; picking nuts or fruits or confections; grinding nuts; stirring gum or sirup; spreading peel or confections; smoothing starch trays; emptying trays; sieving; cutting fruit or ginger; cleaning; washing tins or bottles; stamping lozenges; plain piping or dotting or glazing novelties; marking confectionery; rolling confectionery sticks or balls; blanching nuts; separating confectionery; cutting confectionery (excepting lozenges or goods of similar nature); grinding figs, acids, and other ingredients used in the trade; weighing confectionery and ingredients; straining sirup or other material used in the trade; coating jellies or other confections with such ingredients as dry sugar or cocoanut; turning the handle of any machine; all handling of confectionery directly it leaves the confectioner or machine; packing confections; stirring confectionery or ingredients (if over 30 pounds, to be done by males only); upending sugar; icing novelties; glazing confections; cutting neat work; carrying goods, materials, or utensils; filling dates with cream; placing nuts on paste, shall be paid as follows:

<i>Per week of 48 hours.</i>	<i>Males.</i>	<i>Females.</i>
1st year's experience.....	9s. (\$2.19)	9s. (\$2.19)
2d year's experience.....	11s. (\$2.68)	10s. (\$2.43)
3d year's experience.....	15s. (\$3.65)	11s. (\$2.68)
4th year's experience.....	20s. (\$4.87)	12s. (\$2.92)
5th year's experience.....	25s. (\$6.08)	14s. (\$3.41)
6th year's experience.....	30s. (\$7.30)	16s. (\$3.89)
7th year's experience.....		18s. (\$4.38)
Dipping or covering goods in chocolate by hand or fork:		
1st year's experience.....	10s. (\$2.43)	10s. (\$2.43)
2d year's experience.....	12s. (\$2.92)	12s. (\$2.92)
3d year's experience.....	14s. (\$3.41)	14s. (\$3.41)
4th year's experience.....	16s. (\$3.89)	16s. (\$3.89)
5th year's experience.....	18s. (\$4.38)	18s. (\$4.38)
6th year's experience.....	20s. (\$4.87)	20s. (\$4.87)

Overtime.—That any employee who in any week works for any time in excess of 48 hours shall be paid for such extra time at the rate of time and a quarter.

Special rates.—That double time shall be the special rate for all work done on Sunday, Good Friday, Christmas Day, New Year's Day, King's Birthday, Easter Monday,

Boxing Day, Foundation Day (Jan. 26), Eight Hours Day (Apr. 21), but if any other day be by act of Parliament or proclamation substituted for any of the above-named holidays the special rate shall only be payable for work done on the day so substituted.

Piecework.—This board has determined that the employer may fix piecework prices to be based on the wages rates determined.

EFFECT OF WAGE DETERMINATIONS IN INCREASING WAGES.

The effect of the determinations of the wages boards upon wages in the early years of the operation of the act was shown by the chief factory inspector in his report for 1900. While, as the chief factory inspector remarks, it is not to be supposed that the increases in wages shown are due solely to the determinations of the boards, yet the figures are of interest as showing the course of wages in the years immediately following the fixing of wages in the six industries where the earliest effort was made to regulate wages. A table making these comparisons follows:

AVERAGE WEEKLY WAGES IN INDUSTRIES SUBJECT TO THE DETERMINATIONS OF SPECIAL BOARDS, 1896 TO 1900.

[Source: Bulletin of the U. S. Bureau of Labor, No. 38, Jan., 1902, p. 157. Quoted from Report of the Chief Inspector of Factories, Workrooms, and Shops of Victoria for the year ended Dec. 31, 1900.]

Industry.	First determination of board.	Average wages in 1896 before determination.	Average wages in—				Average gain since 1896.
			1897	1898	1899	1900	
Bread, males	Apr. 3, 1897	\$7. 89	\$9. 06½	\$9. 85½	\$10. 18	\$10. 70½	\$2. 82
Boot:							
Males	Dec. 29, 1897	6. 53				8. 37½	1. 84½
Females	do	3. 24½				3. 55	. 30½
Total	do	5. 63½				6. 79½	1. 16
Clothing:							
Males	Nov. 15, 1897	8. 57½	8. 68	9. 61		10. 30	1. 72½
Females	do	3. 75	3. 81	4. 44		4. 40	. 65
Total	do	4. 86½				5. 47½	. 61
Furniture:							
Males	Apr. 19, 1897	7. 20		8. 76	9. 45	9. 83½	2. 63½
Females	do	3. 42½		4. 62½		4. 44	1. 01½
Total	do	7. 07½		8. 43½		9. 49	2. 41½
Shirt, females	Jan. 20, 1898	3. 51				3. 57	. 06
Underclothing, females	June 26, 1899	2. 73½				3. 06	. 33½

The most recent report of the chief factory inspector, that for 1913,¹ shows for each trade or industry the rates prior to the first determination and those during the last year. These figures are of special interest in some of the trades where wage determinations have been longest in force, and the facts as given in the report are reproduced in full for several of these trades. It will be noted that some very large increases in wages have occurred within the period covered. In some cases the mere averages do not bring out the facts very satisfactorily, as is made clear in the explanations which are given in the column for remarks.

¹ Victoria. Report of the Chief Inspector of Factories and Shops for the year ended Dec. 31, 1913, Appendix E, pp. 140-155.

AVERAGE WEEKLY WAGE PAID BEFORE AND AFTER DETERMINATION OF MINIMUM WAGE IN EACH INDUSTRY (ALL EMPLOYEES).

Short title of board and date when first determination came into force.	Prior to determination first coming into force.	During last year.	Increase.	Remarks.
Boot: Dec. 29, 1897.....	£ s. d. 1 3 2 (\$5.64)	£ s. d. 1 18 0 (\$9.25)	£ s. d. 0 14 10 (\$3.61)	The minimum wage for adult males in this trade has been raised gradually since 1897 from 36s. (\$8.76) per week of 48 hours to 54s. (\$13.14) per week, as at present. The leading manufacturers declared in 1897 that the trade would be seriously injured if the minimum was fixed at 45s. (\$10.95), and satisfied the department that such was the case, yet by 1908 the minimum wage was raised to 48s. (\$11.68) without objection on the part of employers. The improvement in the trade is indicated by the fact that, notwithstanding the increased use of machinery, the number of employees has risen from 4,590 in 1897 to 6,691 in 1913.
Bread: Apr. 3, 1897.....	1 12 6 (\$7.91)	2 19 3 (\$14.42)	1 6 9 (\$6.51)	In 1907 the bread board, on the casting vote of the chairman, raised the wages of journeymen from 1s. 3d. (25.3 cents) per hour, or £2 10s. (\$12.17) per week of 48 hours, to 1s. 1½d. (27.4 cents) per hour, or £2 14s. (\$13.14) per week. This determination was dated June 12, 1907, and came into force on Aug. 5, 1907. On Aug. 15, 1907, the employers' representatives on the board appealed, under the provisions of sec. 123 of the factories and shops act, 1905, to the court of industrial appeals against the increase in wages allowed by the board. The court (Mr. Justice Hood), after hearing evidence, reduced the wages from £2 14s. (\$13.14) per week of 48 hours, or 1s. 1½d. (27.4 cents) per hour, to £2 10s. (\$12.17) per week of 48 hours, or 1s. 3d. (25.3 cents) per hour from Sept. 15, 1907. In August, 1910, as a result of an application by the employees in the trade, leave was given to this board by the court to review or alter its determination, and the board fixed the rates for foremen or single hands at £3 5s. (\$15.82), and for adult workers at £3 (\$14.60) per week of 48 hours. These wages, which came into force on Aug. 1, 1911, were, I understand, agreed to unanimously. It will be noted as one of the curious changes effected by time that, whereas in 1907 the employers successfully appealed against a wage of £2 14s. (\$13.14), yet in 1911 the wages for the same hands were fixed at 6s. (\$1.46) per week higher, apparently without any great difficulty. Owing to the nature of the work there has been great difficulty in collecting statistics regarding the majority of employees in this trade. Prior to the board being appointed the average weekly wage for adults was given as 72s. (\$17.52). In the report for 1911 it was shown as 73s. 9d. (\$17.95). It is now 72s. 8d. (\$17.68), notwithstanding that the minimum wage has been raised from 66s. (\$16.06) to 71s. 6d. (\$17.40) per week.
Bricklayers (1911).....				
Cardboard boxes (1908).....	15 9 (\$3.83)	1 4 1 (\$5.86)	8 4 (\$2.03)	
Clothing: Nov. 15, 1897.....	1 0 0 (\$4.87)	1 7 0 (\$6.57)	7 0 (\$1.70)	The average wage in this trade is lowered by the very great increase in the number of juveniles employed. It is one of the original trades brought under the special board system, and there is no doubt a great deal of sweating has been abolished. The average wage paid to 1,103 adult males in 1913 was £3 0s. 4d. (\$14.68), and to 4,683 adult females £1 6s. 9d. (\$6.51). In 1896, before the board came into force, wages records were received regarding only 3,383 employees, at an average wage of 20s. (\$4.87), whereas last year there were more than that number of adults employed at the rates given above. The total employees for whom wages records were sent in last year were 8,359, an increase of over 145 per cent as compared with 1896.

AVERAGE WEEKLY WAGE PAID BEFORE AND AFTER DETERMINATION OF MINIMUM WAGE IN EACH INDUSTRY (ALL EMPLOYEES)—Concluded.

Short title of board and date when first determination came into force.	Prior to determination first coming into force.	During last year.	Increase.	Remarks.
Clothing: Nov. 15, 1897.	£ s. d. 1 0 0 (\$4.87)	£ s. d. 1 7 0 (\$6.57)	£ s. d. 7 9 (\$1.70)	The increase in juvenile labor is shown by the fact that whereas in 1896 the female employees aged 15 numbered 41, last year there were 214 at that age. Unfortunately the records in 1896 did not indicate the wages of employees who were over 16.
Confectioners (1901)....	16 11 (\$4.12)	1 3 7 (\$5.74)	6 8 (\$1.62)	

The report of the chief factory inspector for 1913 shows for practically all of the boards which have issued wage determinations the average weekly wages of employees before the first determination and during 1913. These figures, with the date of the first determination in each case, are given in the table which follows:

AVERAGE WEEKLY WAGES OF ALL EMPLOYEES IN TRADES UNDER WAGES-BOARD DETERMINATIONS BEFORE DETERMINATIONS AND IN 1913.

[Source: Victoria. Report of Chief Inspector of Factories and Shops, 1913, pp. 140 et seq.]

Name of board.	Date of first determination.	Average weekly wages of all employees.		
		Before first determination.	During 1913.	Increase.
Aerated water trade.....	June 6, 1904	\$6.47	\$9.17	\$2.70
Agricultural implements.....	Apr. 2, 1909	9.59	11.76	2.17
Artificial manure.....	Sept. 1, 1904	9.10	11.86	2.76
Asphalters.....	Apr. 1, 1913	10.42	12.79	2.37
Bedstead makers.....	July 28, 1902	7.83	11.29	3.47
Billposters.....	Oct. 18, 1913	9.31	12.23	2.92
Biscuit.....	Nov. 21, 1913	5.76	6.04	.28
Boiler makers.....	Aug. 1, 1912	10.65	11.86	1.22
Boot.....	Dec. 29, 1897	5.64	9.25	3.61
Boot dealers.....	Sept. 11, 1911	6.55	9.87	3.33
Brass workers.....	May 2, 1904	7.22	9.69	2.47
Bread.....	Apr. 3, 1897	7.91	14.42	6.51
Bread carters.....	June 14, 1909	7.56	10.65	3.08
Brewers.....	Apr. 7, 1902	8.35	12.33	3.97
Brick trade.....	May 6, 1901	10.12	12.90	2.78
Brush makers.....	Aug. 4, 1902	5.62	10.67	5.05
Butchers.....	Jan. 1, 1901	9.17	14.21	5.05
Butter.....	Oct. 1, 1913	10.28	10.99	.71
Candle makers.....	June 24, 1907	6.00	10.16	4.16
Cardboard-box trade.....	Mar. 16, 1908	3.83	5.86	2.03
Carpenters.....	Aug. 29, 1910	11.56	15.21	3.65
Carriage.....	Apr. 2, 1910	7.91	10.28	2.37
Carters.....	June 5, 1911	9.04	11.58	2.53
Cigar trade.....	Apr. 15, 1901	7.36	10.42	3.06
Clothing.....	Nov. 15, 1897	4.87	6.57	1.70
Commercial clerks.....	Jan. 3, 1913	7.44	10.91	3.47
Confectioners.....	May 27, 1901	4.12	5.74	1.62
Coopers.....	do	8.66	15.94	7.28
Cordage.....	Sept. 2, 1912	5.43	6.91	1.48
Country-shop assistants.....	Oct. 7, 1912	7.40	9.43	2.03
Cycle trade.....	Sept. 29, 1907	6.77	10.06	3.28
Drapers.....	Nov. 29, 1909	6.33	9.29	2.96
Dressmakers.....	Sept. 5, 1904	2.90	4.72	1.82
Dyers and clothes cleaners.....	Sept. 1, 1913	6.00	8.94	2.94
Electrical installation.....	Mar. 11, 1912	9.29	10.95	1.66
Electrical supply.....	Mar. 2, 1914	11.11	12.29	1.18
Electroplaters.....	Sept. 5, 1910	7.77	11.11	3.35
Engineering.....	Dec. 1, 1911	9.47	12.39	2.92
Engravers.....	July 1, 1901	8.98	12.41	3.43
Factory engine drivers.....	Nov. 13, 1911	12.31	14.54	2.23
Farriers.....	June 3, 1907	8.56	10.36	1.80

AVERAGE WEEKLY WAGES OF ALL EMPLOYEES IN TRADES UNDER WAGES-BOARD DETERMINATIONS BEFORE DETERMINATIONS AND IN 1913.

Name of board.	Date of first determination.	Average weekly wages of all employees.		
		Before first determination.	During 1913.	Increase.
Fellmongers.....	Aug. 3, 1901	\$7.91	\$10.79	\$2.88
Flour.....	Aug. 3, 1907	9.85	12.29	2.43
Furniture trade (cabinetmaking, etc.).....	Apr. 19, 1897	7.08	11.17	4.10
Mantelpieces and overmantels.....	May 6, 1901	8.15	11.54	3.39
Carpets, linoleums, etc.....	July 1, 1909	6.27	8.15	1.89
Furniture dealers.....	July 1, 1912	11.11	13.48	2.37
Gardeners.....	Sept. 7, 1912	7.89	9.92	2.03
Gas meters.....	Mar. 2, 1914	12.98	13.42	.44
Glassworkers.....	Nov. 29, 1909	8.50	12.47	3.97
Gold miners.....	Mar. 1, 1912	10.81	12.09	1.28
Grocers.....	Mar. 14, 1910	6.65	10.18	3.53
Grocers' sundries.....	Aug. 5, 1912	5.86	7.22	1.36
Hairdressers.....	Dec. 13, 1909	5.54	10.12	4.58
Ham and bacon curers.....	Jan. 2, 1911	9.55	12.37	2.82
Hardware.....	Jan. 1, 1912	8.56	11.64	3.08
Horsehair.....	Sept. 6, 1913	8.29	10.16	1.87
Ice.....	Nov. 1, 1909	12.23	15.84	3.61
Iron molders.....	Oct. 1, 1904	9.21	12.61	3.41
Jam trade.....	June 3, 1901	5.15	7.28	2.13
Jewelers.....	June 1, 1901	8.23	11.88	3.65
Leather goods.....	Aug. 31, 1903	4.95	7.58	2.64
Lift.....	Aug. 14, 1911	6.08	11.80	5.72
Livery stable.....	Aug. 19, 1912	7.62	10.63	3.00
Malt.....	Apr. 3, 1902	10.00	13.02	3.02
Marine store.....	Oct. 28, 1911	6.23	10.38	4.16
Meat preservers.....	Mar. 2, 1914	9.51	10.26	.75
Men's clothing.....	Dec. 12, 1910	9.33	13.40	4.08
Millet broom.....	Jan. 1, 1901	6.79	10.77	3.97
Milliners.....	July 1, 1907	2.66	4.10	1.44
Mining-engine drivers.....	Sept. 4, 1911	12.17	14.94	2.78
Motor drivers.....	Aug. 23, 1913	10.26	12.45	2.19
Nail makers.....	Oct. 16, 1913	8.90	10.69	1.78
Night watchmen.....	July 11, 1911	10.93	12.73	1.80
Office cleaners.....	Nov. 10, 1913	4.32	6.91	2.60
Organ.....	June 6, 1910	9.25	10.40	1.16
Oven makers.....	Feb. 29, 1904	7.95	11.70	3.75
Painters.....	Oct. 1, 1910	9.92	13.52	3.61
Paper.....	May 11, 1914	9.08	9.51	.43
Paper-bag trade.....	Nov. 20, 1907	3.53	4.66	1.14
Pastry cooks.....	Sept. 2, 1901	7.50	9.87	2.37
Picture frame.....	Jan. 11, 1909	5.82	9.25	3.43
Plasterers.....	Dec. 11, 1911	13.95	16.51	2.56
Plate glass.....	May 30, 1901	6.69	10.87	4.18
Plumbers.....	Dec. 2, 1910	7.95	13.08	5.13
Polish.....	May 12, 1911	4.87	5.56	.69
Pottery trade.....	Mar. 27, 1901	6.83	9.65	2.82
Printers:				
Bookbinding.....	Jan. 1, 1902	4.81	6.43	1.62
Printing (metropolitan district).....	do.....	8.96	12.65	3.69
Printing (outside metropolitan district, but not under country printers' board).....	do.....	7.54	12.21	4.66
Country printers.....	Sept. 8, 1913	8.76	9.57	.81
Quarry.....	Aug. 15, 1910	11.80	13.61	1.80
Rubber trade.....	Jan. 1, 1910	8.15	10.87	2.72
Saddlery.....	Oct. 21, 1901	6.59	10.00	3.41
Country saddlery.....	Feb. 3, 1913	7.44	8.72	1.28
Shirt.....	Jan. 20, 1898	3.67	5.74	2.07
Slaters and tilers.....	Feb. 1, 1912	9.90	15.69	5.80
Soap and soda.....	June 17, 1907	6.59	8.60	2.01
Starch.....	June 29, 1907	5.05	8.96	3.91
Stonecutters.....	Mar. 4, 1901	8.74	13.63	4.89
Straw hat.....	Oct. 17, 1913	9.27	12.63	3.37
Tanners.....	May 27, 1901	7.73	11.48	3.75
Tea packing.....	Feb. 10, 1912	6.10	7.81	1.70
Tie makers.....	May 22, 1913	3.85	5.37	1.52
Tinsmiths.....	Nov. 1, 1905	6.75	9.14	2.39
Underclothing.....	June 26, 1899	2.74	4.38	1.64
Undertakers.....	Feb. 16, 1912	10.32	12.79	2.47
Watchmakers.....	Sept. 1, 1911	8.31	12.04	3.73
Waterproof clothing.....	Sept. 2, 1907	5.41	7.66	2.25
Wholesale grocers.....	Aug. 12, 1912	8.50	11.42	2.92
Wicker.....	Aug. 11, 1902	5.53	10.46	4.89
Wireworkers.....	Dec. 1, 1909	7.69	10.87	3.18
Woodworkers.....	Apr. 15, 1901	8.07	12.57	4.50
Country woodworkers.....	Nov. 4, 1912	11.92	13.26	1.34
Woolen trade.....	Apr. 8, 1902	4.97	6.73	1.76

OPERATION OF THE LAW.

The following list of questions concerning the operation of the minimum-wage law in Victoria was sent by the New York Factory Investigating Commission to the chief factory inspector at Melbourne:¹

- First. Does the minimum wage become the maximum?
- Second. How far are the unfit displaced by such legislation?
- Third. Do such laws tend to drive industry from the State?
- Fourth. Do they result in decreasing efficiency?

In response the following statement was received:

FIRST QUESTION.

It is frequently asserted in this State that the minimum becomes the maximum, but our official figures show that this is not the case. I am sending by separate packet a book containing all the existing factory laws of Victoria, and a copy of my latest annual report. If you will kindly refer to Appendix B you will see what the average wage in the trade is. A further reference to Appendix D will give you the wages in any particular trade.² I regret that I have not figures which will precisely answer your question, but a careful comparison will show that the average wage in a trade is invariably higher than the minimum wage. I do not know that there is any exception to this in Victoria.

SECOND QUESTION.

Legislation which fixes a standard wage undoubtedly has the effect of displacing the unfit. Our experience, however, shows that this dislocation is not serious, and that as a rule things regulate themselves fairly satisfactorily. It is true, however, that in Victoria for some years there has been a shortage of labor, and this fact probably has a good deal of bearing on this point. I do not think there is any evidence that philanthropic agencies have ever been called upon to increase their work through minimum-wage legislation. There is, however, a section in our law which enables a license to be issued to a defective worker to permit a lower wage than the minimum to be paid to him (see sec. 202 of law). This power is only sparingly used, as it is regarded very jealously by the trades-unions, and this department requires very strong evidence before it will issue a license to work for less than the minimum.

THIRD QUESTION.

There is no evidence to show that our labor legislation has driven any industry from the State, nor from Victoria to any other part of the Commonwealth. As a matter of fact, labor laws are in operation all over the Commonwealth, so that, if our legislation had any such effect, the industry would have been driven to other countries. There has been an increasing amount of imports in the last few years, but I think I can safely say that the evidence tends to the belief that that is caused more by our general prosperity than any other factor. Side by side with the increasing proportional imports has been a great increase in production and in the number of factories established.

¹ Third report of the New York State Factory Investigating Commission. Appendix III. Minimum-wage legislation, by Irene Osgood Andrews, pp. 228-231.

² See pages 124 to 129. For comparison of wages prior to wages-board determination and in 1913, see pages 131 and 132.

FOURTH QUESTION.

My own opinion is that the fixing of a standard wage increases efficiency generally, from the fact that the employer demands in return a standard degree of efficiency. It is true that some of the unions have endeavored to restrict the output, and have in some cases gone so far as to strike for the purpose of enforcing their demands. They have invariably failed. At the same time there is some evidence that in certain of the trades—and in that connection the agricultural implement making trade might be mentioned—they have succeeded to some extent in lessening the output. For that reason there is a large section of employers in this State who believe that the only fair way of regulating wages is by piecework. Our wages boards have power either to fix piecework rates or to give the employer that privilege with the provision that the piecework rates fixed by him shall be such as will enable an average worker to earn at least the minimum wage. One strike is on record against the fixing of piecework rates by the employer. The molders at the Sunshine Harvester Works objected to piecework rates in any form, although in fact the men were earning considerably over the minimum, and in some cases twice as much. Yet the union took their men out for the simple reason that they objected to piecework being paid under any circumstances, and the men have been out now some five or six weeks. It is only a sectional strike, and probably not more than 20 or 30 men are affected. To answer your question generally, I think it can be truthfully said that the efficiency of the workers all-round is distinctly higher under the minimum wage than it was before.

I may say, in conclusion, that the minimum-wage law in Victoria is working very smoothly. There are fewer strikes in this State under the wages-boards provision than in the neighboring State of New South Wales, where they have an arbitration court. For the last 3 months, out of the 49 strikes that occurred in the 6 States of Australia, 38 were in New South Wales. Our wages-board law takes no cognizance of a strike once it occurs, but leaves the parties to fight it out amongst themselves. In New South Wales they have elaborate provisions for settling strikes that occur, with the above result. We believe that the best way of settling strikes is to provide—as we do in Victoria—every means of arriving at fair conditions between master and man, and of revising those conditions as occasion demands, and then washing our hands of the whole matter.

Prof. M. B. Hammond spent the winter of 1911-12 in Australia and New Zealand studying the operation of the wage board and arbitration legislation, and has summarized his conclusions in the following statement:¹

In conclusion, I wish to sum up as briefly as possible the results which it seems to me have been attained in Victoria and, so far as their experience extends, in the other Australian States, under the wages-boards system. Perhaps I may be allowed to say that I have reached these conclusions after a thorough study of the reports

¹ Third report of the New York State Factory Investigating Commission. Appendix III. Minimum wage legislation, by Prof. M. B. Hammond, pp. 222-228. See also Prof. Hammond's articles referred to in the bibliography at the end of this Bulletin. They are of special importance as giving the results of the most recent first-hand study of a thoroughgoing character.

and records of the departments concerned in the administration of the acts, after attendance on many board meetings, and after interviewing many people, Government officials, chairmen of wages boards, employers, trade-union officials, social reformers, and politicians who have had much to do with wage-board legislation and administration.

1. We may say without hesitation, I think, that sweating no longer exists, unless perhaps in isolated instances, in Melbourne or in other industrial centers of Victoria. This is the opinion expressed to me not only by the officials in the factory inspector's office, including the women inspectors, but also by Mr. Samuel Mauger, the secretary of the Anti-Sweating League, who is constantly on the alert to detect any evidence of sweating and to ask for the appointment of a board in any trade in which it is thought to exist. In the board meetings the efforts of the labor representatives are nowadays seldom directed toward securing subsistence wages, but they aim rather to secure a standard rate of pay based on the needs of the average worker and as much above this as is possible.

2. Industries have not been paralyzed nor driven from the State, as was freely predicted by extreme opponents of the wages-boards plan. There is one instance of a plant having left Victoria on this account.

A brush manufacturer from England, who had recently come to Victoria to establish his business, was so enraged at the idea that the wages he was to pay were to be regulated by law that he moved across Bass Strait to Tasmania. That is the only instance of the kind to be found in the records. On the other hand, there has been a steady growth of manufactures. In 1896, when the factories act, containing the wages-board provisions, was passed, there were in Victoria 3,370 factories; in 1910 there were 5,362. In 1896, the number of workers in factories was 40,814; in 1910 it was 83,053.¹ This, I think, indicates as great a growth in manufacturing industry as most countries are able to show.

3. In spite of the fact that the law in Victoria does not forbid strikes, as is the case under compulsory arbitration, it would be hard to find a community in which strikes are so infrequent as they are in Victoria. There are, I think, not more than half a dozen cases in which a strike has occurred in a trade where the wages and hours were fixed by a wages board. The only serious strike of this sort was in a trade where the court of industrial appeals had lowered the wages fixed by the wages board after these wages had been paid for some weeks. I may add at this point the statement that there are very few cases of appeals from a wages-board determination in Victoria, though there seem to be more in South Australia.

4. In spite of the fact that the meetings of the boards are at times the scenes of outbreaks of passion, and angry and insulting words pass back and forth across the table, there can be little doubt but that the representatives of both parties go away from these meetings with an understanding of the problems and difficulties which the other side has to meet, which is usually lacking in trades where collective bargaining is not resorted to. This was repeatedly brought to my attention both in and out of board meetings by men who had taken part in these discussions. It probably goes far toward explaining the infrequency of strikes and lockouts.

¹ By 1913 these numbers had increased to 8,089 factories with 110,487 employees.

5. That the minimum wage fixed by the board tends to become the maximum in that trade is often asserted, but it would not be easy to prove. Employers have frequently said to me that they believed there was a tendency in that direction, but they have seldom been able to furnish evidence to that effect from their own establishments. At times I have found on inquiry that not a single man in their own plants was receiving the minimum wage. The employers' opinions seem to be more the result of a priori reasoning than the results of actual experience. Nor, on reflection, is it easy to see why the minimum should become the maximum. The determinations do not compel an employer to hire or to retain in employment any worker. He is free to dismiss any man whom he believes incapable of earning the minimum wage, or he can send the employee to the chief factory inspector for a permit to work at less than the minimum fixed by the board. There seems to be no reason why under this system there should not be the same competition among employers as under the old system to secure the most efficient and highly skilled workmen, and there is no reason why such men should not get wages based on their superior efficiency. Victorian statistics on this point are lacking, but in New Zealand, where minimum wages are fixed by the arbitration court, statistics as to wages tabulated in 1909 by the Labor Department, showed that in the four leading industrial centers of the Dominion the percentage of workers in trades where a legal minimum wage was fixed who received more than the minimum varied from 51 per cent in Dunedin to 61 per cent in Auckland.¹ There is no reason to think that a dissimilar situation would be revealed by a statistical investigation in Victoria.

6. Although the legal minimum wage does unquestionably force out of employment sooner than would otherwise be the case a certain number of old, infirm, and naturally slow workers, it is easy to exaggerate the working of the minimum wage in this respect. The opinions of employers differ in regard to this point. Workers who feel that they can not earn the minimum wage may apply to the chief factory inspector for a permit to work at a less rate than the minimum, and the officials who have charge of this matter feel pretty certain that in this way practically all cases really needing relief are cared for. The percentage of men with permits is, however, not high, and possibly there are some who are forced out of work who do not apply for a permit.

7. There is also much difference of opinion as to whether or not the increased wages have been to any considerable extent counterbalanced by an increase of prices due to the increased wages. The probability is that in some occupations higher wages have in this way been passed on to the consumers, the laboring classes included. This would be especially true of industries purely local where there was little opportunity to use machinery.

In Melbourne, following close upon a wage-board determination which raised the wages of waiters and cooks in hotels and restaurants, the cheap restaurants which had been furnishing meals at 6d. (12 cents) by a concerted movement doubled their prices. While the increase of wages in this case was doubtless in part responsible for this increase of prices, in the main the wage increase was the occasion

¹ See pages 170 to 172.

rather than the cause of the increase in prices, which was bound to come sooner or later because of the increase in cost of food supplies.

The New Zealand commission on the cost of living, which has recently published its report, carefully considered this question as to the effect of labor legislation on the cost of living and concluded that in the case of staple products whose prices were fixed in the world's markets, the local legislation could have had no effect on prices. In other trades, the increased labor costs had served to stimulate the introduction of machinery and labor-saving devices; in still other trades it had apparently not increased efficiency, and accordingly labor costs had increased. This seems to have been the case in coal mining. Generally speaking, the evidence in most trades was not sufficiently definite to show whether or not there has been an increase or a decrease in efficiency due to labor legislation. This is about what we must conclude as a result of the conflicting testimony on this point in Australia as well as in New Zealand. I found that most employers with whom I talked were certain that laborers were less efficient than in former years. Generally they could not explain very satisfactorily how this was due to legislation, and their arguments usually reduced themselves to the assertion that the trade-unions were preaching and their members were practicing the doctrine of "go easy," and were in this way restricting the output. Trade-union officials, on the other hand, were just as emphatic in their declaration that such a matter had never been discussed in their meetings. I do not believe that in this respect conditions in Australia differ from what they are in America, and I find that the same assertions are made here by employers as to the effect of trade-unions and that these statements are as vigorously denied by the union officials. Only to the extent, therefore, that compulsory arbitration and wage boards tend to develop and strengthen unionism, which they undoubtedly do, can we find that the legal minimum wage exerts any appreciable effect on the decline of efficiency and the restriction of output. This must remain, therefore, a mooted point.

8. Finally, whatever may be the difference of opinion between employers and employees as to the effect of the legal minimum wage in Victoria in producing certain results, and whatever criticisms they may make of the administration of the factories act, both sides are now practically unanimous in saying that they have no desire to return to the old system of unrestricted competition in the purchase of labor. I did not find an employer who expressed a desire to see the wages boards abolished. Generally speaking, employers are just now holding tightly to this plan, partly no doubt as a means of saving themselves from an extension of the operations of the Commonwealth arbitration act. In the main, however, they have been convinced that the minimum wage has not been detrimental to their businesses and that it has forced their rivals to adopt the same scale of wages as they are themselves obliged to pay. I have mentioned the fact that the Victorian Chamber of Manufactures led the attack on the wage-board system when the Government was providing for its extension in 1900. Last April (1912) the president and secretary of that organization and the president and secretary of the Victorian Employers' Association told me that in spite of the defective administration of the wages-boards act their members had no longer any

desire to have the system abolished. The trade-union secretaries also complain of the administration of the act, particularly that the chief factory inspector does not take a more drastic attitude in regard to the prosecution of the violators of the act whom they have reported. This fact that both sides complain of the administration of the act is a pretty fair indication that the administrative officials are doing their work in a conscientious manner without prejudice or favor. The trade-unionists generally admit that labor has been greatly benefited by the wages-boards legislation, and they do not desire a repeal of these laws, but many of them in Victoria are inclined to think that compulsory arbitration would give them even more. The wages boards deal only with wages, hours, payment for overtime, and the number and proportion of apprentices. The arbitration courts, on the other hand, may and sometimes do give preference to unionists and are often called upon to decide many minor matters which can not be considered by wages boards. Furthermore, wages boards established by any one State are bound to consider interstate competition when they fix wages. The Commonwealth arbitration court, on the other hand, can regulate wages throughout Australia in the industrial field within which it operates. Hostility to the minimum wage in Australia may therefore be said to have practically died out, and the question most discussed to-day is whether this minimum wage shall be secured by means of wages boards or through the machinery of a Federal arbitration court.

NEW SOUTH WALES.¹

HISTORY OF LEGISLATION FOR FIXING WAGES.

In the industrial arbitration act, 1901, the principal innovation lay in the extension of the definition of industrial disputes, so as to include consideration of conditions prevailing in industries in which no dispute existed technically. Under the act of 1908, which represents the third stage in the development of an industrial code, a social ideal was definitely evolved that every normal individual is entitled to a reasonable standard of comfort consistent with the welfare of the community.

All awards, orders, and directions of the court of arbitration, and all industrial agreements current and in force at the commencement of the act, remained binding on the parties, and on the employers and employees concerned, for the period fixed by the court, or by the award, or agreement, or where no period was fixed, for one year from July 1, 1908. Any industrial agreement might be rescinded or varied in writing by the parties, any such variation, if filed with registrar, to be binding as part of the agreement.

Provision was made for the registration of trade, as industrial unions, and the expiration of the industrial arbitration act, 1901, did not affect the incorporation of industrial unions registered under that act, while any trade-union registered under the act might make a written agreement with an employer relating to any industrial matter.

The industrial court consisted of a judge, sitting with assessors, when necessary.

¹ This section to page 142 is from the Official Year Book of New South Wales, 1913, p. 910 et seq.

A board could be constituted for an industry on application to the industrial court by—

- (a) An employer or employers of not less than 20 employees in the same industry.
- (b) A trade-union registered under the act having a membership of not less than 20 employees in the same industry.
- (c) An industrial union whose members are such employers or employees.
- (d) Where there is no trade or industrial union of employees in an industry having membership and registered as aforesaid or where such union fails to make application, then not less than 20 employees in such industry.

Each board consisted of a chairman and not less than two (nor more than four) other members as determined by the industrial court, one-half of whom were employers and the other half employees at some time engaged in any industry or group of industries for which the board was constituted. Where the employers or employees consisted chiefly of women and girls, the court could waive this qualification of quondam employment.

A board with respect to the industry or group of industries for which it was constituted might—

- (a) Decide all disputes.
- (b) Fix the lowest price for piecework and the lowest rates of wages payable to employees.
- (c) Fix the number of hours and the times to be worked in order to entitle employees to the wages so fixed.
- (d) Fix the lowest rates, including allowances as compensation for overtime and holidays and other special work.
- (e) Fix the number or proportionate number of apprentices and improvers and the lowest prices and rates payable to them, according to age and experience.
- (f) Appoint a tribunal, other than the board itself, for the granting of permits allowing aged, infirm, or slow workers, who are unable to earn the lowest rates of wages fixed for other employees, to work at the lowest rates fixed for aged, infirm, or slow workers. If no such tribunal is provided by the board, the registrar has jurisdiction to grant such permits.
- (g) Determine any industrial matter.
- (h) Rescind or vary any of its awards.

At any time within one month after publication of an award by a board any trade or industrial union or any person bound by the award could apply to the industrial court for leave to appeal to such court. The court alone has power to rescind or vary any award or order made by it, or any award of a board which had been amended by the court, or any award of a board which had been dissolved or was no longer in existence; but where public interests are endangered the Crown might intervene in proceedings and make any necessary representations; or, further, the Crown might at any time after the making of an award apply for leave and appeal to the industrial court. Under the amending act of 1910 proceedings for the enforcement of awards and penalties were made referable to a magistrate's court, and in accordance with this proviso the industrial registrar's court was constituted as a court of petty sessions.

The principal points of the industrial arbitration act of 1912 relate to the operations of industrial boards. Provision is made for the registration of industrial unions of employers and employees and also for the cancellation of registration by request or by determination of the court. Unions of employees may make industrial agreements with employers or with any other industrial union, such agreements to be filed and to be binding for five years.

In the constitution of the court of industrial arbitration, provision was made for the appointment of an additional judge and of a deputy, and for the constitution of industrial boards of two or four members, equally representing employers and employees, with a chairman appointed by the minister.

Complementary to the industrial disputes act, 1908, and its amendments, the clerical workers' act, 1910, was passed to enable the constitution of a tribunal to fix a minimum wage for persons engaged in clerical work, as difficulty was experienced in applying the machinery of the industrial disputes act as to wages board to work of this nature, which, moreover, was not an industry or calling scheduled under the act. The clerical workers' act provides that, on application to the industrial court by any employer of not less than 10 clerks or by not less than 10 clerks in the same or similar employment, the court may—

- (1) Fix the minimum wages and rates for overtime payable to clerks, such minimum to be a real minimum, based on the wage which, in the court's opinion, should be paid to—
 - (a) The lowest grade of efficient clerical labor, if it does not classify such labor; or
 - (b) The lowest grade of efficient labor in each class, if it classifies such labor.

The classification is determinable by age, experience, qualification, nature of employment, or in any other way practical, expedient, and just.

- (2) Provide specially for aged, infirm, or slow workers.

The provisions of the industrial disputes act, 1908, were applicable for the making and enforcing of awards, which would be binding for three years. No tribunal has been constituted under this act, which remains supplementary to the industrial arbitration act, 1912; nor have any proceedings whatever been taken under its provisions.

DEVELOPMENT OF JURISDICTION OF WAGE TRIBUNALS.

The industrial arbitration act, 1901, aimed at the determination of disputes referred to it rather than at the constitution of a regulative tribunal. The jurisdiction of the court of arbitration extended to all industries except domestic service, and its awards applied without limitation of area throughout the State.

The industrial disputes act, 1908, aimed at the constitution of wages boards to determine the conditions which should govern employment in specified industries. Boards could be constituted for industries or occupations or local sections of industries or for any division or combination of employees in industries, as might be judged expedient by the court. In practice, boards were constituted for industries, but employees were associated according to trades, to materials worked in, or to goods made, with the result that there were boards for trades, for business, and for industries or associations of

trade—all with exemptions for certain classes of employees or employers.

Under the industrial arbitration act, 1912, the powers of the court and of its subsidiary tribunals are not limited to the relationships of employment. The range of industries and callings is defined by schedule, and boards may be constituted for any industry or calling or for division or combination in such industry or calling. In practice, old boards have been reestablished so far as is consistent with the conditions of the act. Thus a material distinction between the wages-board system as operative under the industrial disputes acts, 1908–1910, and the industrial boards, provided under the industrial arbitration act, 1912, lies in the grouping of allied industries under one chairman and in the arrangement of such boards more upon the basis of craft or calling than of industry, the ultimate aim being the maintenance of some 28 subsidiary arbitration courts, each having power to deal with a group of allied industries, but subject to the general control of the court of industrial arbitration, which in its supreme direction will coordinate the work of the minor courts.

FUNCTIONS OF INDUSTRIAL BOARDS.

The powers of the boards in making awards include—

- (a) Fixing the lowest prices for work done by employees, and the lowest rates of wages payable to employees, other than aged, infirm, or slow workers;
- (b) Fixing the number of hours and the times to be worked in order to entitle employees to the wages so fixed;
- (c) Fixing the lowest rates for overtime and holidays and other special work, including allowances as compensation for overtime, holidays, or other special work;
- (d) Fixing the number or proportionate number of apprentices and improvers and the lowest prices and rates payable to them;
- (e) Determining any industrial matter;
- (f) Rescinding or varying any award made in respect of any of the industries or callings for which it has been constituted;
- (g) Declaring that preference of employment shall be given to members of any industrial union of employees over other persons offering their labor at the same time, other things being equal; provided that where any declaration giving such preference of employment has been made in favor of an industrial union of employees such declaration shall be canceled by the court of arbitration if at any time such union, or any substantial number of its members, takes part in a strike or instigates or aids any other person in a strike; and if any lesser number takes part in a strike, or instigates or aids any other persons in a strike, such court may suspend such declaration for such period as to it may seem just.

Where an institution carried on wholly or partly for charitable purposes provides for the food, clothing, lodging, or maintenance of any of its employees or any of its inmates who are deemed to be employees, the board in its award as to the wages of such employees or inmates shall make due allowance therefor. The board may

exempt such institution from all or any terms of the award where the food, clothing, lodging, and maintenance provided by the institution, together with the money (if any) paid by the institution to such employees or inmates as wages are at least equal in value to the value of the labor of such employees or inmates.

Awards are binding for a maximum period of three years on all persons engaged in the industries or callings and within the locality covered. Appeal lies to the court, but the pendency of an appeal does not suspend the operation of the award.

Proceedings before a board may be commenced by—

- (a) Reference to the board by the court or the minister; or
- (b) Application to the board by employers or employees in the industries or callings for which the board has been constituted.

PROCEDURE IN FIXING MINIMUM WAGE.

1. The court of industrial arbitration recommends the establishment of a board.

2. The minister establishes the board.

3. Minister or court of industrial arbitration refers matter to board, or employers or an industrial union makes application to board.

4. The board shall make investigation in such manner as it thinks fit, and may conduct proceedings, having power to call witnesses and demand records.

5. The board may make an award fixing minimum time and piece rates of wages, the hours of labor, the minimum rates for overtime and holidays, the proportionate number of apprentices and improvers and the minimum rates for them, etc.

6. The award of the board is signed by the chairman and forwarded to the registrar, who forthwith publishes it in the Gazette and notifies the parties. Every award takes effect upon publication.

7. Within 30 days of publication of award application may be made to the industrial court, with its consent, for variation or amendment of the award or for a rehearing.

8. If the board refuses to make any award, any of the parties may, within 14 days of such refusal, make application to the industrial court to make an award.

9. On such application, or upon its own initiative, the industrial court may confirm, vary, or rescind the award appealed from, or make a new award. (An appeal does not suspend an award.)

STATISTICS OF BOARDS AND AWARDS.¹

From February, 1902, to July, 1908, the court of industrial arbitration made 89 awards. From July, 1908, to April, 1912, 213 wages boards under the industrial disputes acts, 1908-1910, issued 430 awards.

During the four years ended June, 1912, the transactions of the industrial court in regard to boards and awards were as follows.

¹ The remainder of this section to page 145 is from the Official Year Book of New South Wales, 1913, p. 923 et seq.

OPERATIONS OF THE INDUSTRIAL COURT IN EACH OF THE YEARS 1909 TO 1912.

Year.	Constitution of boards.		Boards dissolved.	Awards.	
	Applications received.	Recommended.		Made.	Varied.
1909..	105	100	3	45	-----
1910..	44	38	13	102	35
1911..	34	34	7	54	60
1912..	(1)	(1)	1	153	6

¹ The figures for this year can not be used for comparative purposes, as under the system of the 1912 act (operating from April, 1912) the court, on its own motion, and without application to it, recommends the constitution of boards.

² Until Apr. 17.

The operations of the year ended June, 1913, are subject to the industrial arbitration act, 1912, which was operative from April 18, 1912. The transactions for the year ended June 30, 1913, were as follows:

Boards constituted.....	211
Boards dissolved.....	13
Awards rescinded.....	2
Awards varied.....	29
Injunctions granted.....	2

On June 30, 1913, the number of boards in existence, including those under the 1908 act, was 196, in addition to one special board. The number of awards of boards for the year was 113, while 33 awards were varied. The awards of the court numbered 6 and variations and amendments 35.

INDUSTRIAL AGREEMENTS.

Trade-unions were empowered under the industrial arbitration act, 1901, to make written agreements with employers in regard to any industrial matters, the practice of collective bargaining, which had been followed by well-organized unions for years, then first receiving statutory sanction. Agreements relating to any industrial matter could be made by an industrial union with another industrial union or with an employer, and when filed were binding between the parties. Rescissions and variations of agreements also had to be made in writing and duly filed.

Between 1901 and 1908, 28 industrial agreements were filed, of which 11 were subsequently extended as common rules of the industry concerned. The validity of this procedure being questioned, the high court of Australia decided in December, 1904, that it was a condition precedent to the exercise of the power of the court of arbitration to declare a common rule, that there should be in existence an award, order, or direction made by that court in pursuance of a bearing or determination upon a reference under the act. In November, 1905, the court of arbitration declared, by judgment, that the court had no power to make an award, unless a dispute had been initiated and referred to the court for determination. Thus an agreement was not convertible into an award for the purpose of making it a basis for a common rule. Under the industrial disputes act, 1908,

the power of the industrial union of employees to make an agreement was continued. Each agreement would be binding on the parties and on every person while remaining a member of the contracting trade-union or branch. Under the industrial arbitration act, 1912, the agreement may be enforced in the same manner as an award; its maximum duration is fixed at five years, as against three years under the previous enactments. Otherwise, conditions relating to agreements were not altered materially.

Following is a statement of the number of agreements filed in each year since 1902:

AGREEMENTS FILED IN EACH YEAR, 1902 TO 1905.

Year.	Agree-ments filed.	Year.	Agree-ments filed.	Year.	Agree-ments filed.
1902..	28	1906..	13	1910..	21
1903..		1907..	11	1911..	27
1904..	18	1908..	12	1912..	44
1905..	6	1909..	28	1913..	86

The noticeable increase in the number of industrial agreements made between 1905 and 1913 as compared with previous years reflects the measure of encouragement afforded to voluntary collective bargaining.

In December, 1913, 65 agreements were in force, to which 38 unions had been contracting parties.

MINIMUM WAGE FIXED BY PARLIAMENT.

The minimum wage act, 1908, which is consolidated with the factories and shops act, 1912, provided that the minimum wage should be not less than 4s. (97.3 cents) per week in respect of any person employed in preparing or manufacturing any article for trade or sale, or in any factory under the factories and shops act, or working at any handicraft; or any shop assistant as defined by the early closing act.

Provisions apply also to overtime, nightwork, and the payment of premiums for employment.

Contraventions or breaches of the act or of the regulations are reported to the minister for labor and industry by inspectors, and proceedings may be instituted with the authority of the minister. During the year 1910 26 informations were laid in this connection; 11 cases resulted in convictions, 7 were withdrawn on payment of costs; 7 were withdrawn in view of other convictions against the particular employers, and 1 case only was dismissed. In 1911 only two informations were laid, both in Newcastle, and both resulting in convictions, while in 1912 only one information was laid, resulting in a Sydney employer being fined.

The provisions as to the minimum wage are in operation over the whole State.

They are observed carefully throughout the districts subject to inspectorial supervision as to factories and shops, though in many large country towns outside these areas, and not ordinarily included in the inspector's itinerary, infringements may occur, particularly in

dressmaking and millinery establishments, the breaches being attributed mainly to ignorance. Overtime is classified under two heads, viz, by the week of 48 hours, and also, on any working day, after 6 p. m., when tea money is payable. Many clothing factories complete the week's work in five days, and all work done on Saturday is actually overtime. A case being submitted, it was held, on appeal to the high court, that tea money is payable only in the instance when work is done on any day after 6 p. m.

The minimum-wage system has tended to destroy systems of night-work for women, carried on really in violation of the international agreement entered into by Great Britain.

The reasons which led to the enactment of the minimum wage act of 1908 in New South Wales are explained in the report of the Department of Labor and Industry for the year 1908. The report says:

At the end of the year the minimum wage act was passed, providing for a weekly wage of not less than 4s. (97 cents) to all persons coming within the definition of "workman" or "shop assistant." That such a measure was necessary is evidenced by the fact that in the workrooms in the metropolitan district no less than 514 girls whose ages ranged from 13 to 21 years were, at the end of 1908, in receipt of less than 4s. (97 cents) a week, and in the Newcastle district there were 272 girls employed in the dressmaking and millinery workrooms receiving less than 4s. (97 cents) a week, the majority being paid no wages at all for their services.

A very broad and comprehensive definition is given to the terms "employer" and "workmen," and the minimum wage act also applies to any person coming within the definition of "shop assistant" in terms of the early closing act. * * * The payment of a premium or bonus on behalf of employees in connection with the manufacture of articles of clothing or wearing apparel is prohibited. The system of so-called apprenticeship without payment originally carried with it the recognition of an obligation to teach the trade, especially in the dressmaking and millinery industry. This aspect of the case had, to a very great extent, been forgotten in the large workrooms, the training received for some time being more that of general discipline than of a technical character. With a minimum wage of 4s. (97 cents), an employer will find it worth while to teach her employees so as to bring in a return, in work, for the outlay as speedily as possible, and she will probably not so readily discharge a girl whom she has trained for six months in her own ways unless she gives a great deal of trouble. Having so improved their hands, the employers will, I think, prefer to pay a shilling or two extra a week rather than be continually changing and taking on inexperienced hands at the minimum wage. It is, of course, to be expected that a number of hands who were tolerated merely because they cost nothing in wages will no longer be allowed to crowd the ranks of certain trades, as no employer will now keep a girl who does not exhibit a reasonable aptitude for her work, but this should tend to improve the trade as a whole.¹

¹ New South Wales Department of Labour and Industry. Report on the working of the factories and shops act, early closing acts, shearers' accommodation act, etc., during the year 1908. Sydney, 1909, p. 14.

The report issued a year later shows the results attending the operation of the act in the following statement:

This act, which applies to the whole of the State of New South Wales, came into operation at the beginning of the year, and a large amount of inspection has been carried out with a view to the enforcement of same. The anticipations of the department regarding this measure have to a great extent been realized, as there has been a marked reduction in the amount of overtime worked, especially in cases of the younger girls. The payment of 6d. (12 cents) tea money and a minimum overtime rate of 3d. (6 cents) an hour have had the desired effect, and overtime is now almost limited to the older or more competent hands. At the end of 1908 there were between 500 and 600 girls whose ages ranged from 13 to 21 years employed in the workrooms of the metropolitan district, and nearly 200 in the Newcastle district, in receipt of less than the minimum wage of 4s. (97 cents) a week, the majority of whom were being paid no wages at all for their services. These figures are irrespective of a large number who were similarly employed by the numerous small dressmakers and milliners, whose workrooms do not come within the definition of factory. It is safe to say that, from the statistics for 1909, not a single boy or girl is at the present time being employed in any factory in the metropolitan, Newcastle, Broken Hill, Hartley, Goulburn, and Albury districts in receipt of a weekly wage of less than 4s. (97 cents). It is satisfactory to report that very little difficulty was experienced in securing a ready compliance with the act in the large majority of factories and workrooms in the metropolitan district, but there was some opposition on the part of the small suburban dressmaker or milliner, who objected to both teach and pay beginners, no doubt overlooking the fact that a girl should require to know very little to be worth at least a penny an hour to her employer¹

BASIS OF THE WAGES FIXED.

Since 1908 the number of trades in which wages are regulated by awards has extended so rapidly that but few occupations remain without the jurisdiction of industrial tribunals. The principle running through the awards of boards, etc., is the stipulation of an adequate living wage, and the minimum adult wage ranges between 8s. and 9s. (\$1.95 and \$2.19) per day for any class of labor. The question of the cost of living enters into the determination of a living wage, and judgments and awards tend more and more to embody all the factors determining effective wages, rather than to compromise between the standards of employer and employee.

Because of the fact that it used the cost of living as the basis for its wage awards, and because the information available to guide it was regarded as inadequate, the court of industrial arbitration, New South Wales, in October, 1913, initiated an inquiry into the cost of

¹ New South Wales Department of Labour and Industry. Report on the working of the factories and shops act; early closing acts; shearers' accommodation act, etc., during the year 1909. Sydney, 1910, p. 11.

living and living wage. The court, as the result of its inquiry, delivered its judgment on February 16, 1914.¹ The attitude of the court in regard to the basis used in its awards and its conclusions upon its inquiry may be seen best by quotations from the original judgment.

Upon the question of what consideration should be given to the industry in case it appeared unable to pay a living wage, the court said:

If the standard of that family and of others whose conditions were referred to was the average standard of their industries, and if it appeared clearly that those industries could not continue if they had to pay a wage which would raise that standard, ought these industries to be swept away? Certainly, if they could not give a fair living wage.

The court's reasoning and conclusions in considering and fixing the minimum wage are indicated in the following quotations:

To make the lowest wage always the living wage would be to debar the manual worker, who in the immense majority of cases must remain a manual worker all his life, from any possible improvements in his conditions. His wage might go up or down, but only in strict agreement with the increase or diminution of his expenses, so that really it would be always the same. Is this fair? I do not think so. He should have his share in prosperous times. He is still contributing the same share toward the work of the community. Where the result of that work is fortunate, and everybody benefits, why should he not benefit also? True, his share is humble; ambition, backed up with natural aptitude and a resolute will, is the main cause of the progress of the community, and, amongst other things, of its advance in wealth; and manual labor is, as such, the instrument of the men so endowed. But it is an indispensable instrument, and it is supplied by human beings and free citizens, whose share in the general life of the community is great and important, and for whose welfare indeed, in common with that of everybody else, the community life exists at all. I think they should, in good times, get more than a living wage. I consider that I am justified in acting on this view, because it is what happens when there are no courts of arbitration, and I am sure that these were not intended to deprive the worker of his natural advantages. Indeed, it might be put another way: It might be said that as prosperity increases the standard of living rises and carries the living wage with it. This would be true, but I do not think it is well to call what may be a mere temporary change, which may last for only a few years, a change of standard. To my mind, that expression should be limited to change of a more fixed and permanent character, such as become generally accepted as necessary conditions; such, for instance, as the adoption of footwear, both boots and stockings, a change not yet, I think, quite universal in the case of children. This is very different from the changes wrought by a wave of prosperity, and to my mind (though I can understand others taking a different view) it is better to keep the two things

¹ New South Wales Industrial Gazette, Vol. V, No. 1, March, 1914, pp. 100 to 149.

separate, and to have the true living wage in sight even when one departs from it. I entered upon this investigation with a practical end in view; to fix a wage which might assist boards and save time and expense. I doubt whether the mere fixing of the strict living wage will, of itself, do this to a sufficient extent. Being of opinion that more than a living wage should be given, I ought to say how much. This I now do after much thought and with a great sense of responsibility. I suggest to the boards that the minimum wage in Sydney for unskilled workers should be, for light work, 8s. 6d. (\$2.07) per day, for ordinary work 8s. 9d. (\$2.13) per day, and for heavy work 9s. (\$2.19) per day.

This is in the metropolis; as to the country parts, it is evident to me that the living wage itself is much less than in Sydney, and, therefore, the minimum wage should also be less. Unfortunately, according to Mr. Knibbs's tables, and in fact, the cost of living varies in different parts of the country; * * *. The evidence in this inquiry related mainly to the city, and even that which came from the country was not such as to enable me to distinguish between one part and another. I think, therefore, that I can do nothing at present as to the country. I have been strongly inclined to fix a minimum laborer's wage there, the rents in the metropolis being so much higher than in country towns, but on the whole I fear I have not enough material to justify me in this; it might be too low or too high; and a general rate for the country might not suit the variances between the different parts.

As to existing awards, in any case in which a wage of less than £2 8s. (\$11.68) is prescribed, application may be made to the board to increase it to that amount. I do not wish to appear in any way to dictate to the boards, which are quite independent bodies, and, moreover, circumstances may vary, but in my opinion now that a living wage has been declared, no one should get less. This refers, of course, only to those getting less than that wage; not to the rest of the award.

AGED, INFIRM, OR SLOW WORKERS.¹

Applications for variations from award rates were made, under the industrial disputes act, 1908, and its amendments, to the registrar of the industrial court, and to any tribunal which might be constituted for the purpose by an industrial board.

Under the industrial arbitration act, 1912, the registrar alone has power to determine when and how such variations shall be permitted.

For the year ending December 31, 1913, 485 applications were lodged for permits to pay less than award rates; 355 were granted and 130 refused. The number of permits canceled was 6, and 65 applications for permits were withdrawn or not proceeded with.

COST OF INDUSTRIAL BOARDS.²

The boards constituted from the commencement of the industrial arbitration act, 1912, to June 30, 1914, numbered 227, but of that number 16 were for various reasons dissolved before the date last

¹ Official Year Book of New South Wales, 1913, p. 931.

² New South Wales Industrial Gazette, Vol. VI, No. 4, p. 1328 and p. 1353.

mentioned. Of the remaining 211 boards, 195 were in existence June 30, 1913. The boards constituted during the financial year 1913-14 numbered 18, but there were during the same period two cancellations.

Boards are ordinarily constituted for a period of three years, and the boards which were constituted during the year 1913-14 may therefore be regarded as having been constituted in the main in extension of the scheme of boards determined upon during the preceding year.

The awards issued by boards during the course of the year 1913-14 numbered 245, of which 123 were principal and 122 subsidiary awards. The awards of 1913-14 exceeded in number those issued during the previous year by 109; but of the awards of 1912-13, 105 were of principal character and only 30 were subsidiary awards.

The total cost to the department on account of fees and expenses of industrial boards for the year 1913-14 was £13,655 15s. 10d. (\$66,455.91), or £2,603 12s. 4d. (\$12,670.50) more than the cost under the same heads for the previous year. The average cost per board for the year 1913-14 was £100 8s. 2½d. (\$488.65), or £26 12s. 6d. (\$129.57) less than the cost per board during the preceding year.

The average cost per board for each year, 1908 to 1914, was as follows:

	£	s.	d.	
1908-9.....	95	1	3	(\$462.62)
1909-10.....	86	9	7	(\$420.85)
1910-11.....	84	8	0	(\$410.73)
1911-12.....	91	1	6	(\$443.22)
1912-13.....	127	0	8½	(\$618.22)
1913-14.....	100	8	2½	(\$488.65)

The average cost of a single award in the year 1912-13 was £72 0s. 6½d. (\$350.52), whereas the cost for 1913-14 was £66 18s. (\$325.57). The economy of £5 2s. 6½d. (\$24.96) per award thus indicated in favor of the year 1913-14 is more apparent than real, because the proportion of subsidiary awards in the later year was approximately 50 per cent, whereas in the earlier year it was only 22 per cent.

The details of the cost of industrial boards for the year ending June 30, 1914, were as follows:

	£	s.	d.	
Fees:				
Chairman.....	5,432	14	2	(\$26,438.28)
Other members.....	5,752	7	6	(\$27,993.93)
Allowances, etc.:				
Chairman.....	661	8	5	(\$3,218.81)
Other members.....	981	13	10	(\$4,777.40)
Miscellaneous:				
Typing.....	88	14	11	(\$431.88)
Vehicles.....	738	17	0	(\$3,595.61)
Total.....	13,655	15	10	(\$66,455.91)

TYPICAL AWARDS OF INDUSTRIAL BOARDS.

*Building Trades Group, No. 9 Board—Sawmills, etc., Metropolitan and Newcastle Award.*¹

[Published in the Government Gazette No. 80 of 6th May, 1914.]

In the matter of an application by the New South Wales Sawmill & Timber Yard Employees' Association.

This board having considered the above-mentioned application and heard evidence, and having heard Mr. John, secretary of the applicant union, for the union; Mr. Corke for the Sydney & Suburban Timber Merchants' Association, and for certain associated box and case manufacturers and employers of machinists in cooperages; Mr. Bell for the Furniture Manufacturers' Association; Mr. Spier for H. McKenzie (Ltd.); Mr. N. Phelps-Richards for the Master Builders' Association; and Mr. Cook for Hely Bros. (Ltd.), and considered also other objections or claims for exemption, awards as follows:

1. *Area.*

This award shall apply to the whole area for which the board is constituted.

2. *Hours of work.*

An ordinary week's work shall not exceed 48 hours. Ordinary working hours shall be from 7.30 a. m. to 12 noon and from 12.45 p. m. to 5 p. m. on week days, and 7.30 a. m. to 11.45 a. m. on Saturdays.

Employers may fix a different starting time not earlier than 7 a. m.: *Provided*, That the ordinary working hours in any such case shall run from the fixed starting hour, and that in each such case the hours so fixed shall be posted along with this award and not be varied except upon 21 days' notice.

3. *Wages.*

Workmen in the industries covered by this award shall be classified as follows, and be paid wages by the hour at rates which, computed by the week, are not less than those set opposite the name or description of each class.

	£	s.	d.	
Circular sawyers who work, sharpen, and set any saw.....	3	6	0	(\$16. 06)
Circular sawyers cutting timber 9 inches and over in depth.....	3	6	0	(\$16. 06)
Circular sawyers cutting timber between 6 inches and 9 inches in depth.....	3	0	0	(\$14. 60)
All other flat cutting-bench circular sawyers.....	2	14	0	(\$13. 14)
Crosscut sawyers employed in cabinetmaking, and in furniture factories.....	3	0	0	(\$14. 60)
Crosscut sawyers employed in joinery workshops.....	2	18	0	(\$14. 11)
Crosscut sawyers in box or case factories who crosscut box or case material over 6 inches in width.....	2	18	0	(\$14. 11)
Other crosscut sawyers using any power-driven saw.....	2	14	0	(\$13. 14)
Recutting band sawyers, diameter of wheel being 60 inches and over.....	3	6	0	(\$16. 06)
Recutting band sawyers, diameter of wheel being over 48 inches and under 60 inches.....	3	0	0	(\$14. 60)
Recutting band sawyers, diameter of wheel being 48 inches and under.....	2	14	0	(\$13. 14)
Log-band sawyers (vertical or horizontal).....	3	8	0	(\$16. 55)
Log sawyers, other than band sawyers.....	2	18	0	(\$14. 11)
Log sawyers, other than band sawyers who sharpen and set their saws.....	3	6	0	(\$16. 06)
Edging sawyer to log-band saw.....	2	18	0	(\$14. 11)
Fret sawyers or detail band sawyers who work a wheel 3 feet or under in diameter.....	3	0	0	(\$14. 60)
Detail band sawyers who work a wheel over 3 feet in diameter.....	3	6	0	(\$16. 06)

¹ New South Wales Industrial Gazette, Vol. V, No. 3, p. 852 et seq.

	£	s.	d.	
Setters to log-band sawyers.....	2	16	0	(\$13. 63)
Boarding frame sawyers.....	2	16	0	(\$13. 63)
Circular-saw sharpeners.....	3	6	0	(\$16. 06)
Circular-saw doctors.....	3	18	0	(\$18. 98)
Log and recutting band-saw doctors, sharpening for one machine..	3	18	0	(\$18. 98)
Log and recutting band-saw doctors, sharpening for more than one machine.....	4	6	0	(\$20. 93)
Wood turners.....	3	9	0	(\$16. 79)
Order men, tallymen, and measurers.....	2	18	0	(\$14. 11)
Order men are men who receive orders from order office, and are responsible for same being properly selected or measured; or men who select, mark, or measure timber for mill or joinery orders. All such order men must be capable at supering their orders. Tallymen are persons employed to tally timber. Measurers are persons employed to measure timber.				
Laborers who are regularly employed.....	2	14	0	(\$13. 14)
But such laborers, if put to do the work hereafter described as "casual," shall not, if they are paid under this clause, within three months of their engagement, be dismissed (except for misconduct, or inefficiency due to illness); should any laborer in violation of this provision be dismissed within such three months, he shall be paid the rates for casual labor for the full period of his employment, and immediately upon dismissal become entitled to such back pay as may be necessary.				
Timber carried off rafts or sunken punts, which has been submerged—by regular hands—shall be paid for at the rate of 4½d. (\$0.09) per hour extra; the same increased rate shall apply to all work done on rafts or sunken punts in respect of timber which has been submerged.				
Machinists working shaper, Boults' carver, or general joiners' machine.....	3	9	0	(\$16. 79)
Machinists working molding machine, or any two, three, or four sided planer, who grind their own knives or cutters.....	3	8	0	(\$16. 55)
Machinists working molding machines, or two, three, or four sided planer, who do not grind their own knives or cutters.....	3	2	0	(\$15. 09)
Machinists working spoke turner, spoke throater, or spoke planer..	3	0	0	(\$14. 60)
Machinists working tenoning machine, buzzer, jointer, or door-planing machine.....	3	3	0	(\$15. 33)
Machinists working the dimensional planer.....	3	6	0	(\$16. 06)
Machinists working mortising or boring machine.....	2	15	0	(\$13. 38)
Machinists working a sand or emery papering machine, or employed at sand or emery papering by any mechanical device or method.....	2	16	0	(\$13. 63)
Machinists employed in coopers' workshops, who set up a Crozier or cooper's jointer, and grind knives or cutters for same.....	3	8	0	(\$16. 55)
Machinists who work a Crozier machine.....	2	18	0	(\$14. 11)
Machinists who work a truss machine.....	2	16	0	(\$13. 63)
Machinists who work a cooper's jointer.....	2	16	0	(\$13. 63)
Timber benders bending timber by mechanical or other device or method.....	3	0	0	(£14. 60)
Machinists working any woodworking machine not otherwise enumerated.....	2	16	0	(\$13. 63)
Tool grinder.....	3	8	0	(\$16. 55)
Box or case makers or repairers.....	3	0	0	(\$14. 60)
Nailing-machine operators.....	2	14	0	(\$13. 14)
Printing-machine operators.....	2	14	0	(\$13. 14)
Crane attendant or dog-man.....	2	15	0	(\$13. 38)

4. Casual labor.

The term casual labor is applied to the work of receiving timber from beyond the Commonwealth from ships' slings, or by hand from any vessel, lighter, or raft, onto any wharf, or carrying or stacking same off any vessel, lighter, raft, or dump on a wharf, into any yard or place.

(2) Casual laborers are persons (other than regular employees) employed to do such work.

(3) The wages of casual laborers shall be paid once a week, and at the end of each job. Any casual laborer when dismissed shall be paid within 15 minutes from the time of ceasing work, and any time that he is kept waiting beyond 15 minutes shall be paid for at ordinary rates.

(4) One hour shall be allowed for meals.

(5) No casual laborer having begun work shall, without reasonable excuse, cease until the job is completed, unless he is released or discharged by his employer; but one man shall not (except for misconduct or incompetence) be displaced to make room for another.

(6) The ordinary rate of pay for casual laborers shall be 1s. 6d. (\$.37) per hour. Timber carried off rafts or sunken punts which has been submerged shall be paid for at the rate of 1s. 10½d. (\$.46) per hour, and the same increased rate shall apply to all work done on rafts or sunken punts in respect of timber which has been submerged. For overtime until midnight the rate shall be 2s. (\$.49) per hour, after midnight, 3s. (\$.73) per hour. For working during the customary meal hour of the yard, if required, 2s. (\$.49) per hour.

5. *Boy labor.*

Unapprenticed boys shall be paid not less than the following rates per week: Boys under 17 years of age, 16s. (\$3.89); between 17 and 18 years of age, 22s. (\$5.35); between 18 and 19 years of age, 28s. (\$6.81); between 19 and 20 years of age, 34s. (\$8.27); between 20 and 21 years of age, 40s. (\$9.73).

6. *Apprentices.*

Boys may be apprenticed to learn the business or trade of a woodworking machinist, a wood turner, a saw doctor, or sawing and saw sharpening combined. All such apprentices shall be indentured under the apprentices' act, 1901, except as regards the clause relating to transfer. In the event of such slackness of work as to prevent the master from providing instruction for the apprentice, he may transfer the said apprentice to another master to be agreed upon mutually, and the transferee shall assume the rights, privileges, and responsibilities of the transferor.

A copy of each indenture of apprenticeship shall, within 14 days of the making thereof, be given by the employer to the parent or guardian of the apprentice, who shall lodge same with the industrial registrar.

A boy may be employed for not more than three months on probation, and if he is apprenticed, such time of probation shall count as time of his apprenticeship.

The wages of apprentices shall be not less than: For apprentices between 16 and 17 years of age, 11s. (\$2.68) per week; between 17 and 18, 16s. 6d. (\$4.01); between 18 and 19, 22s. (\$5.35); between 19 and 20, 27s. (\$6.57); between 20 and 21, 32s. (\$7.79).

Should any apprentice, during the third or any subsequent year of his apprenticeship, produce a certificate from the examining body that he has attended a two years' course, and passed an examination at a technical college in wood machining, wood turning, saw doctoring or sawing and sharpening, he shall be entitled to 2s. 6d. (\$.61) per week in addition to the above rates for the remainder of his term.

There shall not be more than one apprentice for every two journeymen earning not less than the minimum wage in the process or occupation which the apprentice is to learn.

7. *Piecework.*

In box and case making, daywork or piecework, or both systems concurrently, may be adopted by the employer at his option. Each employer may fix his own log of prices; but they shall be so fixed as to enable the average worker to earn not less than the prescribed minimum wage for the class of work he does, and when fixed shall be posted along with this award.

8. *Overtime.*

For overtime worked after the ordinary knock-off time, the rates shall be as follows: On week days for the first two hours, time and a quarter, then time and a half to midnight, then double time; on Saturdays, time and a half. For overtime worked before the usual starting hour, commencing at 6 a. m. or later, the rate shall be time and a half, and any man called upon to work before the usual starting time shall be allowed three-quarters of an hour for breakfast not later than 8 a. m.

If double shifts are worked, the employees working the night shift shall be paid 10 per cent additional to the ordinary rate of wages.

9. *Holidays.*

Sundays and the days on which New Year's Day, Anniversary Day, Good Friday, Easter Monday, King's Birthday, Prince of Wales's Birthday, Eight Hours Day, Christmas Day, Boxing Day, and the Union Picnic Day (if a Saturday) are observed, shall be paid for, if worked, at double rates. But in builders' workshops Prince of Wales's Birthday and the Union Picnic Day need not be treated as holidays under this award.

Other holidays gazetted for the whole State shall be paid for, if worked, at time and a half rate.

10. *Payment of wages.*

Should any employer cause his employees to wait beyond 15 minutes before starting to pay (unless through some unavoidable circumstance) such employees shall be entitled to payment at ordinary rates for all time kept waiting. Any employee discharged before the regular pay day shall be paid all money due to him on application.

11. *Settlement of disputes.*

Should any dispute arise out of this award, parties are recommended to refer to the settlement of disputes committees of the Sawmill Union, and the Sydney & Suburban Timber Merchants' Association, or the Master Builders' Association

12. *Preference to unionists.*

If and so long as the rules of the applicant union permit, or the union admits any competent workman of sober habits and good repute to become a member on application in writing and the payment of an entrance fee not exceeding 5s. (\$1.22), to be paid at the option of the applicant within 14 days from the commencement of his employment, and a contribution not exceeding 13s. (\$3.16) per annum, to be paid within 3 months of initiation at the like option, in one sum or by installments, and without ballot or election of any kind, then, as between members of the applicant union and other persons offering their labor at the same time, members of the applicant union shall be employed in preference to such other persons, other things being equal.

This, however, shall not affect the existing employment of any nonunionists during the currency of such employment, nor for the purpose of this provision shall such employment be deemed to have terminated should such nonunionists be merely put off through slackness of work and be waiting to be put on by the same employer; neither shall an employer be compelled to give preference to any member of the applicant union who may have been previously discharged for dishonesty, misconduct, or neglect.

13. *Birth certificates.*

For the purpose of ascertaining the age of any boy subject to this award, an employer who takes reasonable care may rely on any birth certificate or statutory declaration as to age, unless or until he has notice of its being inaccurate. Boys employed in the industry shall furnish birth certificates or statutory declarations as to their age on the application of their employer.

14. *Election day.*

On all State and Federal election days employees shall be entitled to cease work at 4 p. m.

15. *Exemption.*

Exemption from the provisions of this award relating to holidays is granted to Hely Bros. (Ltd.): *Provided*, The company observes the holidays of the country award in this industry, and a complete exemption (if the country award be meantime observed) is granted to the same company for the period of one month to enable application to be made to the court for an alteration of the boundaries of the jurisdiction of this award.

16. *Duration.*

This award shall be and remain in force for a period of three years from the date of gazettal.

F. A. A. RUSSELL, *Chairman.*

DENMAN CHAMBERS, *Phillip Street, Sydney.*

Notes.

Posting awards.—Employers in the industries in respect of which this award is in force are to keep a copy of the award exhibited at the place where the industries are carried on so as to be legible by their employees, subject to a penalty of £10 (\$48.67). See Industrial arbitration act, sec. 68 (2).

Aged, infirm, and slow workers.—The industrial registrar is the tribunal to determine where and on what conditions any aged, infirm, or slow worker may be permitted to work for less than the minimum wage and has power to revoke or cancel any such permit. See Industrial arbitration act, sec. 27.

Domestic Group, No. 5 Board—Laundries.¹

[Published in Government Gazette No. 75 of 29th April, 1914.]

In the matter of an application by the Factory Employees' Union of Australasia to the Domestic Group, No. 5 Board, to determine industrial matters.

Award.

The Domestic Group, No. 5 Board, having heard the above-mentioned application, makes the following interim award:

1. *Hours of labor.*—Forty-eight hours as a maximum shall constitute a week's work and shall be as follows: On the first four days of the week from 8 a. m. until 1 p. m. and from 2 p. m. until 5.30 p. m.; on the fifth day from 8 a. m. until 1 p. m. and from 2 p. m. until 6 p. m.; and on the sixth day (Saturday) from 8 a. m. until 1 p. m.

The above provisions do not apply to carters.

Sorters and packers may work on Saturday until 4 p. m: *Provided*, That in such case they shall cease work on the following Monday at 2.30 p. m.; and shall not in any week work more than 48 hours without payment for overtime.

2. *Wages.*—Wages shall be paid by the week in cases in which weekly wages only are herein provided, and by the week or by the day in the cases in which provision is herein made for wages by the week or the day, and wages shall be paid at piece rates in the cases for which piece rates only are herein provided, and at piece rates or by the day in the cases for which piece rates or wages by the day are herein provided; and the lowest rates of wages and prices for piecework payable to employees shall be as follows:

(a) Folders, 12s. (\$2.92) per week; folders feeding mangles, 14s. (\$3.41) per week.

Folders are to be employed in all the different processes of folding, shaking out, attending to mangles of all descriptions. This indicates their employment:

(b) Shirt machinists: Beginners, 12s. (\$2.92) per week; employees doing 6 dozen per day, 16s. (\$3.89) per week; employees doing 8 dozen per day, 17s. 6d. (\$4.26) per week; employees doing 10 dozen per day, £1 (\$4.87) per week; employees doing 12 dozen per day or over, £1 3s. 6d. (\$5.72) per week.

(c) Collar machinists: Beginners, 12s. (\$2.92) per week; employees doing 25 dozen per day, 16s. (\$3.89) per week; employees doing 30 dozen per day, 17s. (\$4.14) per week; employees doing 35 dozen per day, 18s. 6d. (\$4.50) per week; employees doing 40 dozen per day, £1 (\$4.87) per week; employees doing 50 dozen per day or over, £1 3s. 6d. (\$5.72) per week.

(d) Shirt and collar machinists doing boiled-starch work: Beginners, for the first three months, 12s. (\$2.92) per week; after three months, £1 2s. 6d. (\$5.47) per week.

(e) Body ironers, 16s. 6d. (\$4.01) per week; sleeve ironers, 13s. (\$3.16) per week.

(f) Learners in hand ironing: For the first three months, 2s. (\$0.49) per day; for the next three months, 2s. 6d. (\$0.61) per day; and thereafter at the full rates herein provided.

One learner shall be allowed for every six persons or fraction thereof employed in the laundry.

(g) General employees, hangers-out, etc. Under 21 years of age, 16s. (\$3.89) per week; 21 years of age or over, 17s. 6d. (\$4.26) per week.

General employees are to be employed as hangers-out, and make themselves generally useful.

¹ New South Wales Industrial Gazette, Vol. V, No. 3, p. 858 et seq.

- (h) Women working in washhouse, £1 2s. (\$5.35) per week; casual hands, 4s. (\$0.97) per day.
- (i) Starch ironers. Employees engaged in the ironing of any starched garment shall receive one-third of the price charged to the customer.
- (j) Shirts ironed by hand. Mixed shirts, 1s. 9d. (\$0.43) per dozen; full-bosomed shirts, 2s. (\$0.49) per dozen.
- (k) Shirts blocked out by hand and polished by machine, 1s. 3d. (\$0.30) per dozen.
- (l) Backing up machine-ironed shirts, 8d. (\$0.16) per dozen.
- (m) Shirts ironed by machine and body ironers, 6d. (\$0.12) per dozen.
- (n) Plain ironers, 6d. (\$0.12) per dozen, or 3s. 6d. (\$0.85) per day, at the option of the employer. Such option to be exercised at the commencement of the employment. Plain ironers are to be engaged ironing all the different kinds of ladies', gentlemen's, and children's body linen, and all the different smaller articles to be done up in the laundry which are not starched. A plain ironer, if engaged on any starched work, shall be paid not less than one-third, as provided in clause (i) above.
- (o) Hand collar and cuff ironers, 5d. (10 cents) per dozen.
- (p) Sorters. For the first three months, 15s. (\$3.65) per week; for the next three months, 18s. (\$4.38) per week; after the first six months, £1 (\$4.87) per week. For every five sorters employed in a laundry or fraction thereof, a girl under the age of 17 years may be employed at sorting at not less than 14s. (\$3.41) per week. Such girl, on attaining the age of 17 years, shall receive the wage of 15s. (\$3.65) per week for the first three months, 18s. (\$4.38) for the next three months, and £1 (\$4.87) thereafter, as above provided.
- (q) First starchers, £1 2s. (\$5.35) per week; one assistant starcher, 15s. (\$3.65) per week. Starchers have to prepare their starch and to be engaged in the starch room rubbing down and brushing out the work.
- (r) Starch machinists, 15s. (\$3.65) per week. Starch machinists are to be in attendance upon the different kinds of starching machines and to straighten out the work after it has been starched.
- (s) Employees operating starch machines and rubbing down, 15s. (\$3.65) per week.
- (t) Male employees in washhouse, 21 years of age or over, £2 8s. (\$11.68) per week. In laundries where three or more machines are in work, persons under 21 years of age may be employed to assist at the following rates: Fifteen years to 16 years, 13s. (\$3.16) per week; 16 years to 17 years, 15s. 6d. (\$3.77) per week; 17 years to 18 years, 17s. 6d. (\$4.26) per week; 18 years to 19 years, £1 (\$4.87) per week; 19 years to 20 years, £1 5s. (\$6.08) per week; 20 years to 21 years, £1 7s. 6d. (\$6.69) per week. In laundries where one machine only is in work, persons under 21 years may be employed at the following rates: Under 19 years, £1 (\$4.87); 19 years to 20 years, £1 5s. (\$6.08); 20 to 21 years, £1 10s. (\$7.30). Male workers in washhouse are to be in attendance upon all the different kinds of machinery in the washhouse, and to keep the same clean.
- (u) Boys sitting in cart, in charge of the same, whilst the carter is away, up to 16 years of age, 10s. (\$2.43) per week; 16 years or over, 15s. (\$3.65) per week.
- (v) Overtime shall be paid for at not less than the following rates: To female employees, time and a half the first two hours, and double time thereafter; to male employees, time and a half for the first hour, double time for the second hour, and 5s. (\$1.22) per hour thereafter.
- (w) All employees engaged in the different departments of the laundry may be shifted for the time being from one to another, providing the wages paid in the department where any employee may be shifted to are not on a higher scale than the wages paid in such employee's permanent or regular department. And in the event of any employee being shifted into a department where a higher scale of wages is paid, then and in such case the higher rate shall be paid to such employee.

3. *Notice*.—One week's notice shall be given on either side to determine employment. Where such notice is not given by the employer, one week's wages shall be paid in lieu thereof; and where an employee, other than a casual hand, leaves without giving the week's notice, he or she shall forfeit any wages due not exceeding one week's wages.

4. *Engagement and dismissal of hands*.—Employers shall not, in the engagement or dismissal of their hands, discriminate against members of the employees' union, nor in the conduct of their business do anything for the purpose of injuring the said union, either directly or indirectly.

5. *Holidays and holiday rates*.—The following days shall be holidays: New Year's Day, Good Friday, Easter Monday, Eight Hours Day, the King's Birthday, Christmas

Day, or the day on which any of the above may be observed by the Government of New South Wales. The holiday shall be paid for at ordinary rates to workers by the day or week. All work done on a holiday shall be paid for at not less than double time; but this condition shall not apply to carters as regards holidays falling on a Monday: *Provided*, That the employees shall, as far as possible, make up the time taken for holidays, and to enable this to be done, the working hours hereinbefore provided shall not be obligatory during the week in which a holiday takes place.

6. *Exemption of charitable laundries.*—The Sisters of the Good Samaritan Order, the Sisters of the Good Shepherd Order (Ashfield), the Committee of the Church of England Home, and the Rescue Home of the Salvation Army (Stanmore) are granted exemption from the provisions of this award as regards the inmates of the said institutions and in so far as such inmates are employed in and about the work of laundries upon the following conditions:

- (a) The working hours of the said inmates shall not exceed 48 hours per week.
- (b) No work from outside shall be done by the said inmates on the holidays above specified, except Easter Monday.
- (c) The management of each of the said institutions shall cooperate with the New South Wales Laundry Association in regulating the price charged to customers, so as to avoid undercutting or cause a reduction of wages.

Provided, That in the event of the above conditions not being complied with, the exemption hereby granted shall be liable to be rescinded by the board.

7. *Currency and extent of award.*—The provisions of this award shall come into operation on the 1st day of May, 1914. This award shall be binding till the 30th day of June, 1914, throughout the metropolitan area of the State of New South Wales.

* * *

W. H. MOCATTA, *Chairman.*

UNIVERSITY CHAMBERS, *Phillip Street, Sydney, April 24, 1914.*

QUEENSLAND.

The first minimum-wage legislation in Queensland was in the wages boards act of April 15, 1908, modeled generally on the Victorian legislation. A feature differing from the Victorian law was the one permitting boards to be appointed by the governor in council without special parliamentary authorization. The act permitted the boards to be established with jurisdiction throughout the State, or limited, if desirable, to any special locality. As in most of the other Australian States, the legislation was aimed primarily at sweating.

The experience under the wages boards act down to June 30, 1912, is summarized in the report of the chief factory inspector for that year. During the four years in which the wages boards acts were in existence prior to June 30, 1912, 71 boards were established, of which number 30 were brought into existence during the fiscal year ending June 30, 1912. During the last year, also, numerous amendments were made in the act. The character of these amendments, as stated by the chief factory inspector in his report for the year 1912, is summed up in the following statement. The chief factory inspector has also in a number of cases indicated the reasons which suggested the change in the law.¹

An important amendment repeals that section wherein it was provided that, if a man worked at an occupation for which a board had fixed a wage rate, even for less than one hour, he had to be paid

¹ Report of the Director of Labour and Chief Inspector of Factories and Shops for the year ended June 30, 1912. Brisbane, 1912.

that rate for the whole of the time worked by him on that day. This has been removed, and a new section provided, which stipulates that, if a man works at two or more occupations for which a board has fixed a wages rate, he shall be paid the highest rate for the whole of the time so worked. As an instance, say he works one hour at 1s. 6d. (36.5 cents), another at 1s. (24.3 cents), and another at 9d. (18.3 cents), these three rates being fixed by a board, he must receive 1s. 6d. (36.5 cents) per hour for the three hours worked, or 4s. 6d. (\$1.10), whereas otherwise he would receive 3s. 3d. (79.1 cents). All other time worked during the same day at work for which no rate had been fixed would only be paid for at such rate as may be agreed between employer and employee.

More power has now been given to the chairman to obtain evidence, as he will have the power of a police magistrate on such matters. Again, all members of boards, including chairmen, must now take an oath of office that they will not make any false or inaccurate statements, and will faithfully discharge their duties without fear or favor.

It is also provided that now a board has to determine rates for repairing work, also duration of time of meals or "smoke oh," or other intervals of cessation of work, and the time and place of payment of wages.

Another important provision has been inserted, which permits of an employer continuing to employ his apprentices when, through depression of trade, he has to dispense with his other employees, thereby exceeding the proportion of apprentices determined by the board; but this can not be done without the permission of the minister after full inquiry has been made into the bona fides of the case.

Provision is also made which will prevent the possibility of employees being classed as partners on being caught breaking the law by working during prohibited hours; this, therefore, makes such a possibility unlawful unless work is done under the written permission of the chief inspector. Instances have occurred, particularly among the Chinese furniture makers, where the employees, on being found working after hours, were declared to be partners; hence the necessity for amending the act in this particular.

A very important and necessary amendment is that which empowers the chief inspector to issue licenses to aged, slow, and infirm workers pending confirmation of the special board relating to their occupation. Under the original act the special board granted such licenses, and instances of considerable hardship occurred through workers having to await the meeting of the board before being able to secure employment, no employer being agreeable to give the minimum wage until the board had dealt with the application; and very often, especially in regard to boards outside the Brisbane district, the meetings were few and far between. It is now possible for an old, slow, or infirm worker to secure a license immediately on application, and certainly not later than four days afterwards.

An employee must now claim arrears of wages within 14 days after they are due, and may, within one month after such claim, recover such arrears in any court of competent jurisdiction, but if the arrears extend over a period not exceeding 12 months, the balance remaining after paying employee the wages as previously stated shall be paid

into the consolidated revenue of the State. The object of this amendment is to prevent the possibility of an employee knowingly working for a wage less than that determined by a board, with a possible intention of putting in a claim for the higher wage after the arrears of same had accumulated for a period up to 12 months as provided in the original act.

One very important addition is that relating to the power given the governor in council to rescind an order in council whereby it is now possible, where it is desirable, to alter the title of a board or extend its jurisdiction.

Under a new section employers are protected against unscrupulous employees making false statements as to age, experience, or duration of previous employment.

A perusal of the amending act will disclose a number of minor but none the less valuable amendments, which help to render its administration less difficult.

As the members of special boards are appointed for a period of three years, fresh appointments were made in connection with 23 boards to date; in a few instances the retiring members were reappointed, whilst in others the personnel of the board was completely changed.

The determinations have, with one exception, considerably raised the average of wages paid, as a comparative perusal of the appendices of this and preceding annual reports will show. In some instances the increase in the weekly wage amounts to over 50 per cent, and, generally speaking, the rates of piecework have been increased very much in comparison with those prevailing prior to 1908.

The number of apprentices and improvers in proportion to the number of other workers has been fixed, in a great many instances to the entire satisfaction of all parties concerned, and taking the acts and the determinations made thereunder with their application to the trades and callings affected, I have no hesitation in expressing the opinion that the results of this legislation have been eminently satisfactory, and in this opinion I am supported by the expressions of approval which I have received daily during the preceding 12 months from those intimately interested—the employers and the employees.

OPERATIONS OF WAGES BOARDS APPOINTED FROM

[Source: Report of the Director of Labour and Chief Inspect-

Marginal number.	Title of board.	Request for board made by—	Number enrolled.	
			Em- ployers.	Em- ployees.
1	Carpentry and joinery board—Brisbane.....	Employees..	32	523
2	Ironworkers assistants' board—Brisbane.....	do.....	52	202
3	Meat industry board—Brisbane.....	do.....	43	614
4	Men's and boys' clothing board—Brisbane.....	do.....	57	1,524
5	Printing board—Brisbane.....	do.....	48	769
6	Furniture trade board—Brisbane.....	Minister		
7	Boot trade board—Brisbane.....	Employees..	44	744
8	Carting trade board—Brisbane.....	do.....	244	1,016
9	Bread and pastry cooking trade board—Brisbane.....	do.....	42	190
10	Saddle, harness, and collar making trade board—Brisbane.....	do.....	22	139
11	Masters and engineers of river and bay steamboats and barges—Brisbane board for.	do.....	16	88
12	Shop assistants' board—Brisbane.....	do.....	115	1,431
13	Coal working and lightering industry board—Brisbane.....	do.....	6	136
14	Gas stoking industry board—Brisbane.....	do.....	2	105
15	House painting and decorating trade board—Brisbane.....	do.....	14	247
16	Hairdressing industry board—Brisbane.....	do.....	32	91
17	Tinsmithing trade board—Brisbane.....	do.....	19	139
18	Tramways employees' industry board—Brisbane.....	do.....	1	510
19	Meat industry board for the southeastern division.....	do.....	57	540
20	Tanning, currying, and fancy leather dressing industry board for the southeastern division.	do.....	16	156
21	Plumbing, gasfitting, and galvanized iron working trade board for the southeastern division.	do.....	78	390
22	Sawmilling industry board for the southeastern division.....	Employers..	59	1,401
23	Shore engine drivers' and boiler attendants' industry board for the southeastern division.	Employees..	183	903
24	Bricklaying trade board for the southeastern division.....	Employers..	27	136
25	Coach builders' and wheelwrights' trade board for the southeastern division.	Employees..	66	356
26	Stonemasons' trade board for the southeastern division.....	do.....	9	50
27	House painting and decorating trade board for the southeastern division.	do.....	22	113
28	Coal mining industry board for the southeastern division.....	do.....	16	1,112
29	Carpentry and joinery trade board for the southeastern division.....	Employers..	80	316
30	Dock laborers' industry board for the southeast coast.....	Employees..	6	147
31	Printing trade board for the southern division.....	do.....	41	205
32	Bread and pastry cooking trade board for the southeastern division.	do.....	65	154
33	Brewing, malting, and distilling industry board for the southeastern division.	do.....	11	229
34	Gas working industry board for the southeastern division.....	do.....	7	44
35	Ironworkers assistants' board for the southeastern division.....	do.....	49	434
36	Cooks for the southeastern division, board for.....	do.....	155	260
37	Meat industry board for the central division.....	do.....	47	428
38	Coopers' trade board for the southeastern division.....	Employers..	15	70
39	Printing trade board for the central division.....	Employees..	16	77
40	Furniture makers' board for the southeastern division.....			
41	Meat industry board for the northern division.....	Employees..	60	743
42	Carting trade board for the southern division.....	do.....	190	482
43	Saddle, harness, and collar making trade board for the southeastern division.	do.....	46	156
44	Electrical engineering industry board.....	do.....	20	218
45	Candle making industry board.....	do.....	1	25
46	Iron, brass, and steel molding trade board—Brisbane.....	Employers..	20	85
47	Bread and pastry cooking trade board for the central division.....	Employees..	51	94
48	Iron, brass, and steel molding trades board for the southeastern division.	Employers..	10	105
49	Brickmaking and pottery industry board for southeastern division.	Employees..	12	184
50	Coal gas lampfitting, cleaning, and repairing industry board—Brisbane.	do.....	2	34
51	Coal mining industry board for the State, exclusive of the southeastern division.	{do.....}	2	102
52	Shipwrights' trade board for the southeast coast.....	Employers..		
53	Engine drivers, firemen, greasers, and assistant firemen's industry board for the central division.	do.....	9	71
		Employees..	65	570
54	Builders laborers' board—Brisbane.....	Employers..	70	194
55	Hotel, club, and restaurant employees' board—Brisbane.....	Employees..	126	1,044
56	Orchestral musicians' board—Brisbane.....	do.....	9	121
57	Printing trade board for the northern division.....	do.....	31	146
58	Sugar manufacturing industry board for the central division.....	Employers..	10	317
59	Plastering trade board for the southeastern division.....	Employees..	8	38
60	Rope making industry board.....	do.....	1	19
61	Warehouse laborers' board—Brisbane.....	do.....	32	343
62	Wool, hide, skin, and produce stores laborers' board—Brisbane.....	do.....	26	316
63	Carting trade board for the central division.....	do.....	96	223

THE ENACTMENT OF THE LAW TO JUNE 30, 1912.

tor of Factories and Shops for year ended June 30, 1912.]

Members of board appointed—	Chairman of board named by—	Date of first meeting.	Date of announcement of determination.	Date determination came into force.	Amount of fees paid to board.	Marginal number.
Oct. 17, 1908.....	Board.....	Nov. 20, 1908.....	Feb. 27, 1909.....	Mar. 25, 1909.....	\$475.70	1
do.....	do.....	Nov. 19, 1908.....	Feb. 6, 1909.....	Mar. 11, 1909.....	513.42	2
do.....	do.....	Nov. 18, 1908.....	Jan. 16, 1909.....	Feb. 8, 1909.....	228.73	3
do.....	Minister.....	Dec. 10, 1908.....	Sept. 19, 1910.....	Oct. 17, 1910.....	5,399.38	4
do.....	do.....	Dec. 4, 1908.....	July 3, 1909.....	Oct. 1, 1909.....	1,130.24	5
Oct. 22, 1908.....	do.....	Jan. 13, 1909.....	Aug. 5, 1909.....	Nov. 1, 1909.....	733.62	6
Nov. 7, 1908.....	Board.....	Dec. 11, 1908.....	Apr. 28, 1909.....	May 31, 1909.....	1,007.37	7
do.....	Minister.....	Jan. 22, 1909.....	May 26, 1909.....	June 12, 1909.....	1,338.29	8
Nov. 28, 1908.....	do.....	Feb. 12, 1909.....	July 15, 1909.....	Sept. 4, 1909.....	394.19	9
do.....	Board.....	Jan. 8, 1909.....	Oct. 1, 1909.....	Nov. 1, 1909.....	2,955.18	10
Dec. 5, 1908.....	Minister.....	Feb. 27, 1909.....	Sept. 17, 1909.....	Oct. 11, 1909.....	354.04	11
do.....	do.....	Jan. 19, 1909.....	Aug. 6, 1909.....	Sept. 6, 1909.....	638.73	12
Dec. 24, 1908.....	do.....	Feb. 11, 1909.....	Jan. 14, 1910.....	Feb. 1, 1910.....	453.80	13
do.....	Board.....	Feb. 3, 1909.....	Feb. 27, 1909.....	Apr. 1, 1909.....	143.56	14
do.....	do.....	Feb. 16, 1909.....	Apr. 3, 1909.....	May 1, 1909.....	153.29	15
Feb. 6, 1909.....	do.....	Feb. 26, 1909.....	Mar. 27, 1909.....	Apr. 26, 1909.....	43.80	16
do.....	do.....	Mar. 5, 1909.....	May 26, 1909.....	June 14, 1909.....	209.26	17
Mar. 29, 1909.....	Minister.....	May 19, 1909.....	June 16, 1909.....	July 1, 1909.....	76.65	18
June 11, 1909.....	do.....	July 29, 1909.....	Aug. 31, 1909.....	Sept. 27, 1909.....	142.35	19
do.....	Board.....	July 19, 1909.....	Aug. 9, 1910.....	Sept. 5, 1910.....	844.34	20
do.....	Minister.....	Aug. 3, 1909.....	Dec. 8, 1909.....	Jan. 1, 1910.....	396.62	21
June 28, 1909.....	Board.....	Aug. 5, 1909.....	Dec. 1, 1909.....	do.....	601.01	22
do.....	do.....	Aug. 9, 1909.....	Sept. 16, 1909.....	Oct. 4, 1909.....	575.46	23
July 8, 1909.....	do.....	Aug. 6, 1909.....	Nov. 4, 1909.....	Jan. 1, 1910.....	142.35	24
do.....	do.....	Aug. 24, 1909.....	July 22, 1910.....	Aug. 8, 1910.....	734.84	25
do.....	do.....	Aug. 17, 1909.....	Nov. 4, 1909.....	Jan. 1, 1910.....	234.81	26
July 31, 1909.....	do.....	Sept. 6, 1909.....	Feb. 11, 1910.....	Mar. 31, 1910.....	111.93	27
Aug. 26, 1909.....	do.....	Dec. 2, 1909.....	Oct. 4, 1910.....	Oct. 24, 1910.....	1,640.01	28
Sept. 14, 1909.....	do.....	Nov. 4, 1909.....	Apr. 13, 1910.....	June 1, 1910.....	504.90	29
do.....	do.....	Nov. 17, 1909.....	Dec. 20, 1909.....	Jan. 10, 1910.....	47.45	30
Oct. 11, 1909.....	Minister.....	Dec. 2, 1909.....	Aug. 5, 1910.....	Sept. 5, 1910.....	246.97	31
Nov. 4, 1909.....	do.....	Jan. 18, 1910.....	Jan. 28, 1910.....	Feb. 26, 1910.....	86.38	32
do.....	do.....	Jan. 12, 1910.....	Oct. 26, 1910.....	Nov. 21, 1910.....	69.35	33
do.....	Board.....	Jan. 11, 1910.....	Feb. 18, 1910.....	Mar. 14, 1910.....	29.20	34
do.....	Minister.....	Jan. 19, 1910.....	Mar. 15, 1910.....	Apr. 13, 1910.....	79.08	35
Nov. 16, 1909.....	Board.....	Dec. 21, 1909.....	Aug. 11, 1910.....	Sept. 1, 1910.....	228.73	36
Nov. 18, 1909.....	Minister.....	Feb. 1, 1910.....	Apr. 5, 1910.....	May 1, 1910.....	115.58	37
Feb. 24, 1910.....	do.....	Feb. 15, 1910.....	Nov. 10, 1910.....	Dec. 1, 1910.....	195.88	38
Mar. 4, 1910.....	Board.....	Apr. 21, 1911.....	May 30, 1910.....	July 1, 1910.....	135.05	39
Mar. 10, 1910.....	Minister.....	Apr. 26, 1910.....	June 20, 1910.....	Aug. 1, 1910.....	128.96	40
Apr. 7, 1910.....	do.....	June 28, 1910.....	July 15, 1910.....	June 30, 1910.....	60.88	41
Apr. 18, 1910.....	Board.....	May 31, 1910.....	Aug. 15, 1910.....	Oct. 3, 1910.....	856.50	42
June 20, 1910.....	do.....	July 27, 1910.....	Oct. 12, 1910.....	Nov. 1, 1910.....	680.09	43
July 21, 1910.....	do.....	Sept. 1, 1910.....	Sept. 28, 1910.....	Oct. 14, 1910.....	136.26	44
Sept. 1, 1910.....	Minister.....	Nov. 3, 1910.....	Nov. 16, 1910.....	Dec. 19, 1910.....	27.98	45
Sept. 22, 1910.....	do.....	Oct. 21, 1910.....	Nov. 10, 1910.....	Dec. 2, 1910.....	38.93	46
Sept. 27, 1910.....	Board.....	Oct. 29, 1910.....	Feb. 22, 1911.....	Mar. 5, 1911.....	195.88	47
Oct. 4, 1910.....	Minister.....	Oct. 25, 1910.....	Nov. 10, 1910.....	Dec. 12, 1910.....	36.50	48
Oct. 13, 1910.....	do.....	Nov. 15, 1910.....	May 31, 1911.....	June 8, 1911.....	300.51	49
Nov. 1, 1910.....	Board.....	Dec. 20, 1910.....	Jan. 31, 1911.....	Feb. 23, 1911.....	34.07	50
Nov. 24, 1910.....	do.....	Apr. 20, 1911.....	June 16, 1911.....	July 3, 1911.....	259.14	51
do.....	do.....	Jan. 10, 1911.....	June 20, 1911.....	July 10, 1911.....	93.68	52
Dec. 1, 1910.....	Minister.....	Feb. 8, 1911.....	Mar. 1, 1911.....	Apr. 1, 1911.....	54.75	53
Mar. 2, 1911.....	Board.....	Mar. 13, 1911.....	Apr. 29, 1911.....	May 1, 1911.....	130.18	54
Apr. 27, 1911.....	do.....	June 12, 1911.....	do.....	do.....	528.02	55
May 4, 1911.....	Minister.....	June 27, 1911.....	Oct. 24, 1911.....	Nov. 4, 1911.....	158.16	56
May 11, 1911.....	Board.....	do.....	Mar. 25, 1912.....	Mar. 25, 1912.....	119.23	57
May 13, 1911.....	do.....	June 6, 1911.....	June 30, 1911.....	July 14, 1911.....	175.19	58
May 18, 1911.....	do.....	June 20, 1911.....	July 8, 1911.....	July 24, 1911.....	34.07	59
Sept. 21, 1911.....	Minister.....	Nov. 21, 1911.....	Feb. 28, 1912.....	Mar. 25, 1912.....	81.51	60
Sept. 29, 1911.....	Board.....	Oct. 18, 1911.....	Jan. 17, 1912.....	Jan. 1, 1912.....	142.35	61
do.....	do.....	Oct. 24, 1911.....	Jan. 3, 1912.....	Jan. 8, 1912.....	139.91	62
Oct. 30, 1911.....	do.....	Nov. 28, 1911.....	Jan. 27, 1912.....	Jan. 29, 1912.....	122.88	63

OPERATIONS OF WAGES BOARDS APPOINTED FROM

Marginal number.	Title of board.	Request for board made by—	Number enrolled.	
			Em- ployers.	Em- ployees.
64	Ironworkers assistants' board—Brisbane.....	Employees..	22	288
65	Meat industry board—Brisbane.....	.....	42	602
66	Men's and boys' clothing board—Brisbane.....	.....	38	790
67	Printing board—Brisbane.....	.....	41	554
68	Carpentry and joinery board—Brisbane.....	.....	35	318
69	Boot trade board—Brisbane.....	.....	42	190
70	Carting trade board—Brisbane.....	.....	204	895
71	Bread and pastry cooking trade board—Brisbane.....	.....	42	133
72	Saddle, harness, and collar making trade board for the southeast- ern division.....	.....	14	179
73	Masters and engineers of river and bay steamboats and barges, Brisbane board for.....	.....	10	59
74	Shop assistants' board—Brisbane.....	.....	133	1,524
75	Gas stoking industry board—Brisbane.....	.....	2	99
76	House painting and decorating trade board—Brisbane.....	.....	.....	.....
77	Coal working and lightering industry board—Brisbane.....	.....	6	54
78	Hairdressing industry board—Brisbane.....	.....	14	38
79	Tinsmithing trade board—Brisbane.....	.....	13	135
80	Chemists assistants' board—Brisbane.....	Employees..	26	49
81	Men's and boys' clothing board—Brisbane.....	.....	17	706
82	Carting trade board for the central division.....	Employees..	81	186
83	Storemen for the central division, board for.....	do.....	50	130
84	Tramways employees' industry board—Brisbane.....	.....	1	515
85	Carpentry and joinery trade board for the central division.....	Employees..	31	210
86	Furniture trade board—Brisbane.....	.....	33	480
87	Men's and boys' clothing trade for southeastern division.....	Employees..	65	525
88	Carpentry and joinery trade board for the Mackay division.....	.....	6	20
89	Storemen for the Mackay division, board for.....	.....	5	11

¹ Amendments.

THE ENACTMENT OF THE LAW TO JUNE 30, 1912—Concluded.

Members of board appointed—	Chairman of board named by—	Date of first meeting.	Date of announcement of determination.	Date determination came into force.	Amount of fees paid to board.	Marginal number.
Nov. 2, 1911.....	Minister.....	.....	.....	.....	.....	64
Nov. 9, 1911.....	Board.....	.....	.....	.....	.....	65
Nov. 20, 1911....	Minister.....	.....	.....	.....	.....	66
.....do.....	.....do.....	.....	.....	.....	.....	67
.....do.....	Board.....	.....	.....	.....	.....	68
Dec. 6, 1911.....	Minister.....	.....	Sept. 7, 1911 ¹	Oct. 4, 1911.....	.....	69
Dec. 8, 1911.....	.....do.....	.....	Sept. 23, 1911 ¹	Sept. 25, 1911.....	.....	70
Dec. 14, 1911....	Board.....	.....	.....	.....	.....	71
.....do.....	.....do.....	.....	Aug. 16, 1911 ¹	Aug. 26, 1911.....	.....	72
Jan. 3, 1912.....	Minister.....	.....	.....	.....	.....	73
.....do.....	.....do.....	.....	.....	.....	.....	74
Jan. 16, 1912....	Board.....	.....	.....	.....	.....	75
.....do.....	Minister.....	.....	.....	.....	.....	76
Jan. 18, 1912....	.....do.....	.....	Jan. 3, 1912 ¹	Jan. 15, 1912.....	.....	77
Mar. 7, 1912.....	.....do.....	.....	.....	.....	.....	78
.....do.....	Board.....	.....	Jan. 3, 1912 ¹	Jan. 8, 1912.....	.....	79
Mar. 21, 1912....	.....do.....	Apr. 22, 1912.....	June 21, 1912.....	.....	149.64	80
Mar. 22, 1912....	.....do.....	.....	.....	.....	.....	81
Apr. 11, 1912....	Minister.....	.....	.....	.....	.....	82
Apr. 15, 1912....	.....do.....	June 14, 1912.....	.....	.....	7.30	83
Apr. 26, 1912....	Board.....	.....	.....	.....	.....	84
Apr. 29, 1912....	.....do.....	June 25, 1912.....	.....	.....	.....	85
.....do.....	.....do.....	.....	.....	.....	.....	86
May 23, 1912....	.....do.....	.....	.....	.....	.....	87
June 18, 1912....	.....do.....	.....	.....	.....	.....	88
.....do.....	.....do.....	.....	.....	.....	.....	89

The wages-board system was in 1912 replaced by a system of industrial or wages boards with an arbitration court, by the industrial peace act of 1912. The immediate cause of this legislation was a general strike in 1912 which for a time paralyzed the industries of the country

The industrial boards are constituted by the governor in council on recommendation of the industrial court, but without any preliminary parliamentary resolution. The members of the boards are appointed by the governor in council after an election of their representatives by the employers and employees, respectively. Each board elects its own chairman. The jurisdiction of the boards extends to any industrial matter or dispute in connection with the industry or calling for which the board was created.

The act of 1912 created an industrial court, consisting of a judge appointed by the governor in council. Appeal may be taken from the awards of the industrial boards to this court. The court has power also in case of any willful or unnecessary delay on the part of the board to take over all questions in the hands of the board and to exercise the functions of the board and issue an award in the place of the board. The court also has jurisdiction over any industrial matters and industrial disputes which may be submitted to it by the minister or by an employer employing not less than 20 persons, or by not less than 20 employees in any calling. In such a case the court exercises the powers and authority of a board and as such makes awards and orders.

At the end of April, 1914, it was reported that 92 industrial boards had been authorized, of which 81 were at that time in existence. The number of awards in force was 76. On June 30, 1914, the number of employees affected by the 92 awards then in force was 90,000.

SOUTH AUSTRALIA.

Minimum-wage legislation in South Australia dates from the factories act of December 5, 1900. As in most of the other Australian States, the special purpose of the act was to do away with sweating, which according to the reports of the chief inspector of factories was prevalent in the clothing trades. The chief inspector reported that he had even found that manufacturers in other Australian States were shipping their materials to South Australia to be made up at the very low rates there prevailing and to be returned to those States and sold.

In form the South Australia act of 1900 was modeled on the Victorian legislation. A statutory minimum of 4s. (97.3 cents) a week was fixed and the establishment of wages boards was authorized for factory and outworkers engaged in the manufacture of: (1) White work, (2) boots and shoes, (3) furniture, (4) bread, and "such other

manufacturing trades or businesses as may be from time to time fixed and determined by resolution of Parliament."

The act was to go into effect as soon as regulations were accepted by Parliament. Regulations were drawn up and submitted to Parliament in 1901. The proposed regulations, however, were not approved, and it was not until 1905 that the appointment of any boards was secured. This, however, was not under the act of 1900, but under the act of 1904, applying only to clothing and white work and including all females, and males under 21. The first determination under the clothing board was issued December 1, 1905. The determination of the shirt-making and white-work board was issued early in 1906. Even then, because of opposition and defects disclosed in the act, the determinations were held invalid. The report of the chief factory inspector, however, shows that many of the manufacturers conformed to the rates fixed by the boards.

In 1906 Parliament provided for boards similar to the Victorian model in 8 trades, namely, bread making, boots, brick making, butchering, dressmaking, carriers and drivers, furniture making, and shirt making and white work. Boards were at once appointed in these 8 trades and determinations became effective in September, 1906.

In 1907 the various factory acts were consolidated in the factories act of 1907, in effect January 1, 1908, under which it was necessary to draw up new regulations. Opposition to the enforcement of the act again developed and the regulations were withdrawn in Parliament. New regulations were approved under date of September 30, 1908, from which the actual beginning of operations of the wages-board system in South Australia may be said to date.

The industrial arbitration act of 1912, enacted December 19, 1912, substituted for the wages-board system formerly in effect a mixed system of wages boards and an industrial court resembling that of the New South Wales act of 1912. Under the new law the wages boards were continued, but were subordinate to the industrial court, whose powers were made considerably broader than those formerly granted to the wages boards under the old system. The boards, however, are not appointed on the recommendation of the industrial court as in New South Wales, but by the governor in council upon the nomination of employers and employees, respectively. The boards nominate their president, who is then appointed by the governor.

As in most of the Australian States the basis which the boards use in fixing the minimum wage is the "living wage." The South Australian act provides that "the court shall not have power to order or prescribe wages which do not secure to the employees affected a living wage. 'Living wage' means a sum sufficient for the normal and

reasonable needs of the average employee living in the locality where the work under consideration is done or is to be done."

At the end of April, 1914, it was reported that 56 boards had been authorized, 51 of which were at that date in existence. Approximately 25,000 employees were in the trades which had been brought under the jurisdiction of boards. At the same date 54 determinations were in force, 6 of which had been made by the industrial court after the minister of industry had reported the inability to appoint boards as provided for by the law or the failure of the duly appointed boards to discharge the duties in accordance with their appointment.

TASMANIA.

Tasmania was the last of the Australian States to adopt minimum-wage legislation. The wages board act of 1910 (January 13, 1911), which came into operation March 31, 1911, followed the Victorian model, but applied only to clothing and wearing apparel, including boots and shoes. The system could be extended to other trades only by parliamentary authorization. In 1912 Parliament authorized the creation of 19 additional boards, as follows:

Bakers and pastry cooks' board.	Flour millers' board.
Bricklayers and stonemasons' board.	Furniture makers' board.
Brickmakers and pottery makers' board.	Hotels, coffee palaces, restaurants, and clubs' board.
Butchers' board.	Ironmolders' board.
Carpenters and joiners' board.	Jam makers' board.
Carters and drivers' board.	Painters and decorators' board.
Coach builders' board.	Pastoral industry board.
Engineers' board.	Printers' board.
Plasterers' board.	Threshing machine board.
Timber trade board.	

The wages boards are appointed by the governor in council on nominations by employers and employees. As in Victoria, each board consists of not less than 4 nor more than 10 members and a chairman, selected either by the members, or in case of default in selection, appointed by the governor. At the end of April, 1914, 23 boards had been authorized and 21 were in existence.

The act provides for no court of appeal, but permits an appeal to the supreme court on grounds of legality. The minister of labor, however, is authorized to suspend or refer back for reconsideration any determination.

The act also forbids a lockout or strike on account of any matter in respect to which a board has made a determination. For violation of this provision severe penalties are imposed, namely: In the case of an organization £500 (\$2,433.25) and in the case of an individual £20 (\$97.33).

As originally passed, the act of 1910 provided that the minimum wage to be fixed should be based on and could not exceed "the

average prices or rates of payment (whether piecework prices or rates of wages prices or rates) paid by reputable employers to employees of average capacity." As in Victoria and some of the other States, the form of reference to "reputable employers" was considered objectionable by employees as it limited the wages to be fixed to those paid at the time. The objectionable provision was repealed in the act of September 14, 1911 (wages board act, 1911). The basis now prescribed in the law for fixing minimum wage is shown in the following quotation from the act of 1911:

SEC. 22. (1) The board, for the purpose of determining the lowest prices or rates of payment which may be paid, shall take such evidence as it deems sufficient, and shall take into consideration—

- (a) The nature, kind, and class of the work;
- (b) The mode and manner in which the work is to be done;
- (c) The age and sex of the workers, and in addition, as regards apprentices and improvers, their experience at the trade; and

(d) Any matter whatsoever which may from time to time be prescribed.

(2) The board shall ascertain what prices or rates are fair and reasonable as the lowest prices or rates to be paid, taking into consideration the evidence and the matters and things mentioned in subsection (1) of this section, and shall make their determination accordingly; and the board (if it thinks fit) may fix different prices or rates accordingly.

WESTERN AUSTRALIA.

In Western Australia an abortive industrial conciliation and arbitration act was passed December 5, 1900, and as amended February 19, 1902, became operative in that year. The act of 1902 was modeled on that of New Zealand, including an arbitration court of three members and district conciliation boards.

The present act, which is a consolidation of previously existing laws, is the industrial arbitration act of 1912, enacted December 21, 1912.

The act provides for a court of arbitration, appointed by the governor, one member to be appointed on the recommendation of the industrial unions of employers and one on the recommendation of the industrial unions of employees, the third member, who acts as president, to be a judge of the supreme court. The powers of the court are very broad, extending practically to any industrial matter.

In fixing the minimum wage in its award, the living wage is the standard, the law providing that "no minimum rate of wages or other remuneration shall be prescribed which is not sufficient to enable the average worker to whom it applies to live in reasonable comfort, having regard to any domestic obligations to which such average worker would be ordinarily subject."

At the end of April, 1914, it was reported that 18 awards were in force. In addition, there were 93 industrial agreements, which under the law have the force and effect of awards. The membership of registered industrial unions was reported as 30,000.

NEW ZEALAND.

INTRODUCTION.

The first of all the laws providing a means for fixing the legal minimum wage was the New Zealand Industrial Conciliation and Arbitration Act of 1894, enacted August 31, 1894, and in force January 1, 1895. The New Zealand act was primarily a compulsory arbitration act for the prevention and settlement of strikes and lockouts. The authority conferred upon the arbitration court to fix conditions of employment included fixing the minimum rates of wages to be paid in the cases coming before it.

The New Zealand law has been many times amended,¹ but has remained from the beginning primarily an act for the settlement of disputes and the fixing of wages by an arbitration court. In 1908 councils of conciliation were introduced, with functions and methods somewhat similar to those of the wages boards, and disputes were required to be heard by the conciliation tribunal before they could be referred to the court of arbitration. Thus under the present law a large proportion of the disputes are settled by the councils of conciliation.

The number of awards and agreements actually in force March 31, 1914, was 445. During the period since the act came into force the number of factories has increased from 4,109 in 1894-95, to 13,469 in 1913-14. The number of factory workers had increased within the same period from 29,879 to 87,517, an increase in number of employees having been recorded each year except two.²

New Zealand, like most of the Australian States, has also an act fixing a minimum wage below which no person may be employed. This law was first enacted October 21, 1899, and is now embodied in the factories act, 1908. This law fixes the minimum wage at 5s. (\$1.22) a week for the first year of employment in the trade, 8s. (\$1.95) a week for the second year, with additions of 3s. (73 cents) a week for each year of employment in the same trade until a wage of 20s. (\$4.87) is reached. The purpose of this provision of law was to prevent the employment of children and apprentices without any wage or at a premium, as was often done under the pretense of teaching the trade.

SUMMARY OF PROVISIONS OF INDUSTRIAL ARBITRATION ACT.

The main provisions of the New Zealand law may be summarized as follows:³

Industrial Districts.

Under the regulations of the act the Dominion of New Zealand is divided into eight industrial districts.

¹ The later acts are: Oct. 18, 1895; Oct. 17, 1896; Nov. 5, 1898; Oct. 20, 1900 (consolidation act); Nov. 7, 1901; Sept. 24, 1903; Nov. 20, 1903; Nov. 8, 1904; Oct. 27, 1905 (consolidation act); Oct. 31, 1905; Oct. 29, 1906; Aug. 4, 1908 (consolidation act); Oct. 10, 1908; Dec. 3, 1910; Oct. 28, 1911; Oct. 3, 1913. The text of the law as existing early in 1900 was printed in Bulletin of the Bureau of Labor, No. 33, pp. 207 et seq. The text of the law as existing early in 1903 was printed in Bulletin of the Bureau of Labor, No. 49, pp. 1282 et seq.

² Twenty-third Annual Report of the New Zealand Department of Labour, 1914, p. 7.

³ New Zealand Official Year Book, 1914. Wellington, 1913, pp. 661-665.

Registration of Industrial Unions and Associations.

Any society consisting of not fewer than three persons in the case of employers or fifteen in the case of workers in any specified industry or industries in an industrial district may be registered as an "industrial union" on compliance with the requirements for registration. Any incorporated company may also be registered as an industrial union of employers. Any two or more industrial unions of either employers or workers in any industries may form an "industrial association," and register the same under the act. Industrial associations are usually formed for the whole or greater part of New Zealand, comprising the unions registered in the various industrial districts.

Such registration enables any union or association—

(1) To enter into and file an industrial agreement specifying the conditions of employment agreed upon. This agreement (which is binding only on the parties to it), although required by the act to be limited to a period of not more than three years, remains in force until superseded by another agreement or an award of the court of arbitration, except where the registration of the union of workers concerned is canceled.

(2) In the event of failure to arrive at an industrial agreement, to bring an industrial dispute before a council of conciliation set up for the purpose, and, if necessary, before the court of arbitration.

It should be noted that while employers may individually be cited by a workers' union or association, workers can be cited by employers only when such workers are voluntarily registered under the act as an industrial union or association of workers.

The constitution of councils of conciliation and of the court of arbitration is explained later on in this section. A council of conciliation has no compulsory powers; it merely endeavors to bring about a settlement. If a settlement is effected it may be filed as an "industrial agreement." In most cases, however, it has been found that on arriving at a settlement through the council of conciliation the parties prefer to have the agreement made into an award of the court of arbitration, and in such cases the dispute is formally passed on to the court for that purpose.

If the members of the council agree upon a unanimous recommendation, but do not get an "industrial agreement" signed by all the parties, the recommendation is now (vide the 1911 and 1913 amendments) filed for one month, and if no party disagrees with the same within that time the recommendation becomes automatically binding on the parties.

If a complete settlement is not arrived at, the council is required by the act to refer the dispute to the court of arbitration, which, after hearing the parties, may make an award, and any items of the dispute that have been agreed upon before the council may be embodied by the court into its award without any further reference. Such an award is, like an industrial agreement, binding on all the parties cited, and is also binding on any other employers subsequently commencing business in the same trade in the district. Unless the district is further limited by the court in the award, the award applies to the industrial district in which it is made. Pending the sitting of the court of arbitration to hear the dispute, it is the duty of the council to endeavor to bring about some provisional agreement.

Awards are also required by the act to be limited to a period of not more than three years, but, nevertheless, remain in force until superseded either by another award or by a subsequent agreement, except where the registration of the union of workers has been canceled.

Under the act in force from 1901 to 1908 power was given to any of the parties to a dispute, when once filed for hearing by the board of conciliation appointed under that act to hear all disputes in the district, to refer the same to the court of arbitration direct without waiting for a hearing by the board. This provision was repealed in 1908, when all disputes were again required to be heard by the conciliation tribunal before being referred to the court of arbitration. In 1911, however, a clause was inserted to enable an industrial association, party to a dispute extending over more than one industrial district (and therefore beyond the jurisdiction of a conciliation council), to apply direct to the court of arbitration for the hearing of the dispute.

Registration also enables a union or association to cite before a magistrate any party committing a breach of an award or industrial agreement. Parties generally prefer, however, to hand over any such cases to the labor department to cite or otherwise dispose of as it thinks fit.

Under the act individual employers have the same powers as unions or associations of citing other parties, although they seldom exercise those powers.

Constitution of Conciliation Councils.

The act provides for the appointment of not more than four conciliation commissioners to hold office for three years; three have been appointed and each of the eight industrial districts is placed under the jurisdiction of one of them.

When a dispute arises the union, association, or employer desiring to have the same heard makes application to the commissioner in the form provided, stating the nature of the dispute, and the names of the respondents, and recommending, at its option, one, two, or three assessors to act as representatives on the council to be set up. On receipt of the application the commissioner notifies the respondents and calls upon them to similarly recommend an equal number of assessors to represent them. The assessors must, except in special cases at the discretion of the commissioner, have been engaged in the industry. Councils of conciliation are thus set up for each dispute as it arises.

Constitution of the Court of Arbitration.

The court of arbitration is appointed for the whole of New Zealand, and consists of three members, one of whom—the permanent judge of the court—possesses the same powers, privileges, etc., as a judge of the supreme court. Of the other members, one is nominated by the various unions of employers throughout the Dominion and one by the unions of workers, and their appointments are determined by a majority of the unions on each side, respectively. Like the members of the former boards of conciliation, they hold office for three years, and are eligible for reappointment. The judge and one member constitute a quorum. All decisions of the court are arrived at by the judgment of a majority of the members present at the sitting, or, if those members present are equally divided in opinion, the decision of the judge is final. The court has full power to deal with questions

brought before it, and, except in the case of matters which may be ruled to be beyond the scope of the act, there is no appeal from its decision.

Breaches.

Breaches of awards and industrial agreements are punishable as follows: A union, association, or employer by fine not exceeding £100 (\$486.65) for each breach; a worker by fine not exceeding £5 (\$24.33) for each breach. Penalties are recoverable at the suit of either an inspector of awards (by action in the magistrates' court or the arbitration court), or any party to the award or agreement (by action in the magistrates' court), but there is a right of appeal from the magistrates' to the arbitration court. Actions for the recovery of penalties must be commenced within six months after the cause of action has arisen.

COMPARISON OF MINIMUM RATES UNDER AWARDS WITH ACTUAL RATES PAID.

The department of labor of New Zealand in its report for 1909 makes extensive comparisons of the actual rates paid in various industries in the four chief industrial centers with the minimum rates paid under arbitration awards. In commenting upon its figures, the department report says:¹

Appended to this report appears the result of an investigation, as far as factories are concerned, into the extent to which the arbitration court in fixing a minimum wage has or has not lowered the average wage, or injured high rates for especially good workers. It has so often been asserted with blind confidence that every award of a minimum wage has "leveled down" all wages, that it will come as a surprise to the general public to find how few workers have to accept the minimum wage, which is not, as has been so often stated, "the award wage," but a limit of wage below which no persons in that particular trade may be paid. In the bootmaking trade, for instance, in Auckland 66 per cent, in Wellington 85½ per cent, in Christchurch 66 per cent, and in Dunedin 50 per cent of the workers receive wages above the minimum wage. In Auckland 91 per cent, in Wellington 57½ per cent, in Christchurch 50 per cent, and in Dunedin 26 per cent of the cabinetmakers receive above the minimum wage named in the award. Plumbers and gas fitters receiving wages above the award minimum are: In Auckland 66 per cent, Wellington 19 per cent, in Christchurch 84 per cent, in Dunedin 59 per cent. It is of no use laboring the matter here by quoting figures too profusely, since the whole state of the case can be seen by any person studying the table, but the investigation has served to prick one of the bubbles so freely blown by opponents of the act when trying to gain the sympathy of those whose wages have been for years protected by the industrial courts from the undercutting of unscrupulous mates or the forcing-down methods of greedy exploiters.

The same report makes similar comparisons in a large number of industries. ² In the tailoring trade, including factory-made clothing,

¹ Eighteenth Annual Report of the New Zealand Department of Labour, 1909. Wellington, 1909, p. xiii.

² *Idem.*, pp. 133 et seq.

a trade in which the majority of employees are women, similar differences were found, as is shown in the following table:

PER CENT OF WORKERS RECEIVING MORE THAN THE MINIMUM AWARD RATES.

Sex.	Auckland (city).		Wellington.		Christchurch.		Dunedin.	
	Minimum rates under awards.	Per cent receiving more than minimum.	Minimum rates under awards.	Per cent receiving more than minimum.	Minimum rates under awards.	Per cent receiving more than minimum.	Minimum rates under awards.	Per cent receiving more than minimum.
Males.....	\$12. 17	64	\$13. 38	37½-100	\$13. 38	27-100	\$13. 38	33½-87
Females.....	\$6. 08-7. 30	24½	6. 08	74 - 90	6. 08	26-100	6. 08	34 -57
Total.....		47		77		46		55

The report of the New Zealand department for 1910 makes similar comparisons of actual rates paid and minimum rates under awards. Upon its figures for the year 1910 the report contains the following comment:¹

Again this year I append a table of an investigation, as far as factories are concerned, showing rates paid to workers as compared with the minimum wage under awards, etc. For this purpose the wages of 7,374 workers have been compared. Of this number, 2,785 received the minimum wage, and 4,589 in excess of it, or a total of 62 per cent. In making this comparison only the wages of persons over the age of 21 are taken; and on reference to the return it will show how each industry governed by an award is dealt with. Unfortunately, owing to the difficulty of making comparisons, some of our principal industries have not been dealt with, as the awards provide for two or three rates to be paid to certain classes of employees, and the schedules received from employers do not always separate the workmen into the various classes. However, there is sufficient evidence to show that in our manufacturing industries at least an average of 50 per cent of the workers compared received more than the rates granted in the awards of the court of arbitration. Such a result must be exceedingly gratifying to those interested in the industrial legislation of the Dominion, especially in view of the fact that opponents of the act have stated in and out of season that the majority of workers are receiving only the minimum wage, and that the work accomplished by the first-class man gets no more recognition than that of the ordinary employee who makes no special effort to deserve extra monetary reward. If this allegation is true in regard to workers outside manufacturing industries—which I very much doubt—the figures quoted by the department in this report hardly bear out the contention in regard to many of our leading manufacturing industries. I find in regard to the cities the returns show that in Auckland, out of 2,119 employees compared, 782 receive the minimum rate and 1,337 in excess, equal to 63 per cent. In Wellington 1,513 employees have been compared, 535 of whom receive the minimum rate and 978 in excess of the minimum, or 64 per cent. In Christchurch 2,367 have been compared, 869 of whom receive the minimum

¹ Nineteenth Annual Report of the New Zealand Department of Labour, 1910. Wellington, 1910, pp. xi, xii.

rate and 1,498 in excess of minimum, or 63 per cent. In Dunedin 1,375 employees have been compared, of whom 599 receive the minimum and 776 in excess of the minimum, or 56½ per cent.

WORK OF CONCILIATION COUNCILS AND ARBITRATION COURT.

The work of the conciliation councils and arbitration court during the year ended March 31, 1914, may be summarized as follows:¹

	Cases.
Industrial agreements.....	42
Recommendations of councils of conciliation.....	166
Awards of the arbitration court.....	93
Applications for awards refused.....	3
Enforcements of awards (conducted by department) in arbitration court.....	8
Interpretation of awards.....	20
Other decisions (amending awards, adding parties, etc.).....	48
Appeals from decisions of stipendiary magistrates in enforcement cases.....	5
Appeal from registrar's decision to refuse registration of union....	1
Magistrate's courts:	
Enforcements of awards, etc. (conducted by department)....	425
Enforcements of awards (conducted by unions).....	4
Enforcements of act.....	7
Permits to underrate workers granted by inspectors of factories and secretaries of unions.....	208

Of 433 cases for breaches of awards in which the proceedings were taken by the labor department, 401 were decided in favor of the department and 32 were dismissed. In four cases conducted by unions, one conviction was recorded, and three cases were dismissed.

COST OF ADMINISTRATION.

The cost of administration of the act by the arbitration court and councils of conciliation during the year 1912-13 was £8,171 19s. 6d. (\$39,768.91), made up as follows:²

	£	s.	d.	
Salaries of members of arbitration court....	2,800	0	0	(\$13,626.20)
Salaries of conciliation commissioners.....	1,500	0	0	(\$7,299.75)
Salaries of arbitration court officers.....	165	0	0	(\$802.97)
Fees paid to assessors, councils of conciliation.....	1,473	15	0	(\$7,172.00)
Traveling, etc., expenses of arbitration court.....	1,249	13	11	(\$6,081.64)
Traveling, etc., expenses of conciliation commissioners.....	373	10	7	(\$1,817.78)
Traveling, etc., expenses of conciliation assessors.....	610	0	0	(\$2,968.57)
Total.....	8,171	19	6	(\$39,768.91)

The cost of administration for the year 1913-14 was £415 16s. 8d. (\$2,023.65) less than in the preceding year, the differences being chiefly in traveling expenses.¹

¹ Twenty-third Annual Report of the New Zealand Department of Labour, 1914, pp. 18 and 19.

² New Zealand Official Year Book, 1913. Wellington, 1913, p. 674.

GREAT BRITAIN.¹

SUMMARY OF PROVISIONS OF TRADE BOARDS ACT.

Minimum-wage legislation in Great Britain was initiated by the trade boards act which came into operation January 1, 1910. The original act provided for the establishment of trade boards authorized to fix minimum rates of wages in four trades, selected as being especially subject to sweating. These trades were the following:

1. Ready-made and wholesale bespoke tailoring, employing upward of 200,000 persons, about one-third of whom were men.
2. Paper-box making, employing about 25,000 persons.
3. Machine-made lace and net finishing, and mending or darning operations of lace curtain finishing, employing about 10,000 persons.
4. Certain kinds of chain making, employing some 3,000 persons, two-thirds of whom were women.

By the trade boards provisional orders confirmation act enacted August 15, 1913, four additional trades were brought within the scope of the act. These were:

1. Sugar confectionery and food preserving, employing about 80,000 persons.
2. Shirt making, employing approximately 40,000 persons.
3. Hollow ware, employing about 15,000 persons.
4. Linen and cotton embroidery, employing about 3,000 persons.

In 1913, and again in 1914, the Board of Trade took steps to secure the extension of the act, by Parliament, to power laundries. On both occasions, however, Parliament declined to grant the necessary authorization because of defects in the bill presented or lack of the information desired preliminary to definite action in the case.

The act provides that the Board of Trade may make a provisional order applying the act to any other trade if they are satisfied that the rate of wages prevailing in any branch of that trade is "exceptionally low" as compared with that in other employments, and that the other circumstances of the trade are such as to render the application of the act to the trade expedient.

No provisional order extending the act to any additional trade has effect unless and until it is confirmed by Parliament.

The principal function of trade boards is to fix minimum rates of wages; that is to say, rates of wages which in the opinion of the trade board are the lowest which ought to be paid to workers in the trade and district for which the rates are fixed.

Every trade board consists of equal numbers of members representing employers and members representing workers in the trade, to-

¹ This section is based largely upon an official report entitled "Memoranda in reference to the working of the trade boards act" presented to Parliament by the Board of Trade, May 27, 1913. London, 1913, H. C. 134.

gether with a smaller number of "appointed members," who are persons unconnected with the trade and appointed by the Board of Trade.

The membership of the trade boards in existence in June, 1913, is shown in the following statement, which also indicates the cases in which members were elected and those in which members were nominated by the Board of Trade:

MEMBERSHIP OF TRADE BOARDS, JUNE, 1913.

Trade.	Ap- pointed mem- bers.	Representatives of—				Additional members chosen by Board of Trade.		Total repre- sentative mem- bers.
		Employers.		Workers.		Em- ployers.	Work- ers.	
		Elect- ed.	Nomi- nated.	Elect- ed.	Nomi- nated.			
Chain making	3	6		6				12
Lace finishing	3		8		8	2	2	20
Paper-box making (Great Britain)...	3	16			16	3	3	38
Paper-box making (Ireland)	3	4		4		1	1	10
Tailoring (Great Britain)	5		13		13	2	2	30
Tailoring (Ireland)	3	10		10				20
Total		36	21	20	37	8	8	130

Nine district trade committees, covering the whole country, have been established by the paper-box trade board (Great Britain) and seven district trade committees, covering the whole country, have been established by the tailoring trade board (Great Britain). No minimum rate of wages can have effect in an area for which a district trade committee has been established, unless the committee has recommended it or has had an opportunity of reporting to the trade board.

The district trade committees consist partly of appointed members, partly of representative members of the trade board, and partly of representatives of local employers and local workers. The local representatives have in all cases been nominated by the Board of Trade.

The membership of the 16 district trade committees mentioned above is shown in the two following tables:

MEMBERSHIP OF PAPER-BOX DISTRICT TRADE COMMITTEES (EXCLUSIVE OF APPOINTED MEMBERS), JUNE, 1913.

District. ¹	Representative members of the trade board chosen to act on committees.		Local representa- tives.		Additional mem- bers chosen by Board of Trade.		Total repre- sentative mem- bers.
	Employ- ers.	Work- ers.	Employ- ers.	Work- ers.	Employ- ers.	Work- ers.	
Manchester.....	2	2	4	4	1	1	14
Liverpool.....	2	2	4	4	1	1	14
Leeds.....	2	2	5	5	.....	.....	14
Leicester.....	2	2	5	5	.....	.....	14
Nottingham.....	2	2	4	4	.....	.....	12
Birmingham.....	3	3	5	5	1	1	16
Bristol.....	3	3	5	5	1	1	18
London.....	4	4	7	7	2	2	26
Glasgow.....	3	3	5	5	.....	.....	16
Total.....	23	23	44	44	5	5	144

¹ The districts are here named, for the sake of brevity, after the principal centers of the trade in the several areas. The districts covered by the committees are set out in full in the regulations for the paper-box trade board (Great Britain).

MEMBERSHIP OF TAILORING DISTRICT TRADE COMMITTEES (EXCLUSIVE OF APPOINTED MEMBERS), JUNE, 1913.

District. ¹	Representative members of the trade board chosen to act on the committees.		Local representatives.		Total representative members.
	Employers.	Workers.	Employers.	Workers.	
Glasgow.....	3	3	6	6	18
Leeds.....	4	4	8	8	24
Manchester.....	3	3	8	8	22
Leicester.....	3	3	6	6	18
Norwich.....	2	2	5	5	14
London.....	4	4	29	29	26
Bristol.....	3	3	0	6	18
Total.....	22	22	48	48	140

¹ The districts are here named, for the sake of brevity, after the principal centers of the trade in the several areas. The districts covered by the committees are set out in full in the regulations for the tailoring trade board (Great Britain).

² Including 1 additional member nominated by the Board of Trade.

ORGANIZATION AND WORK OF TRADE BOARDS.

The act requires the trade boards to fix minimum time rates of wages for their trades. It also gives them power to fix general minimum piece rates. These rates, whether by time or piece, may be fixed so as to apply to the whole trade or to any special process or to any special class of workers or to any special area.

Before fixing any minimum rate of wages a trade board must give notice of the rate which they propose to fix, and must consider any objections that may be put before them within three months; and when the rate has been fixed notice of it must be given by the trade board for the information of the employers and workers affected.

Any rate so fixed immediately has a limited operation, as follows:

- (a) An employer must pay wages at not less than the minimum rate, unless there is a written agreement under which the worker agrees to accept less. If there is no such written agreement, wages at the minimum rate can be recovered from the employer as a debt (but the employer will not be liable to a fine).
- (b) Any employer may give notice to the trade board that he is willing to be bound by the rate fixed and be liable to the same fine for underpayment as if the rate had been obligatory. No employer will receive a contract from a Government department or local authority unless he has given notice to the trade board in this manner.

The limited operation described above continues (unless the Board of Trade direct to the contrary in any case in which they have directed the trade board to reconsider the rate) until the Board of Trade make an order making the rate obligatory. Such an order must be made by the Board of Trade six months after notice of the fixing of the rate has been given by the trade board, unless the

Board of Trade consider it premature or otherwise undesirable to make an obligatory order. In that case the Board of Trade must make an order suspending the obligatory operation of the rate. After the expiration of six months from the date of any order of suspension the trade board may apply to the Board of Trade for an obligatory order. On any such application the Board of Trade must make an obligatory order unless they are of opinion that a further order of suspension is desirable.

When a minimum rate has been made obligatory by order of the Board of Trade, any agreement for the payment of wages at less than the minimum rate is void, and payment of wages at less than the minimum rate, clear of all deductions, renders the employer liable to a fine of not more than £20 (\$97.33), and to a fine not exceeding £5 (\$24.33) for each day on which the offense is continued after conviction therefor.

Employers may arrange with their workers for payment either by piece or time. If the workers are paid by piece for doing work for which a minimum time rate but no general minimum piece rate has been fixed, two courses are open to the employer: (a) He may fix the piece rate himself, in which case he must be able to show, if challenged, that his rate would yield to an ordinary worker, in the circumstances of the case, at least as much money as the time rate fixed by the trade board (*it is not necessary for him to show that the piece rate which he has fixed yields every worker, however slow or incapable, at least the same amount of money as the minimum time rate would yield, nor, on the other hand, is it sufficient for him to show that the piece rate which he has fixed will yield the equivalent of the minimum time rate in the case of a specially fast worker*); or, (b) he may, if he chooses, apply to the trade board to fix a special minimum piece rate for the persons he employs.

In cases where a trade board are satisfied that a worker is affected by an infirmity or physical injury which renders him incapable of earning the minimum time rate, and that he can not suitably be employed on piecework, they may grant to the worker a permit of exemption; and so long as the conditions prescribed by the trade board on the grant of the permit are complied with, an employer is not liable to penalty for paying the worker wages at less than the minimum time rate.

The minimum rates of pay for adults fixed by the trade boards up to the present time are as follows:

MINIMUM WAGE RATES FIXED FOR ADULTS BY TRADE BOARDS FOR GREAT BRITAIN.

Trade.	Males.	Females.
Chain making	5d.-7½d. ¹ (10.1 cents-15.6 cents).....	2½d. (5.6 cents).
Wholesale tailoring.....	6d. (12.2 cents) (at 22 years).....	3½d. ² (6.6 cents).
Lace finishing	No males.....	2½d. (5.6 cents).
Paper-box making.....	6d. (12.2 cents) (at 21 years).....	3d. (6.1 cents).
Confectionery ³	6d. (12.2 cents) (at 22 years).....	3d. (6.1 cents).
Shirt making ⁴	(*).....	3½d. (7.1 cents).

¹ According to size of chain.

² An increase to 3½d. (7.1 cents) has recently been proposed (January, 1915) by the trade board.

³ These are the proposed rates. They have not been finally determined.

⁴ Men do not desire minimum wages to be fixed.

PROSECUTIONS FOR ENFORCEMENT OF ACT.

Officers have been appointed by the Board of Trade for the purpose of investigating complaints and otherwise securing the proper observance of the act. These officers have power to enter factories, workshops and places used for giving out work and to require the production of wages sheets, lists of outworkers, and other relevant information.

An important part of the work of the investigating officers has been concerned with cases in which nonobservance of the minimum rates has been found to be due to misunderstanding or carelessness, and it has seemed desirable to effect a settlement, on the basis of a revision of the rates of wages and payment of the arrears due to the workers without recourse to legal proceedings.

As examples of the cases dealt with, the following may be of interest:

- (1) Found three workers underpaid. Arrears paid in all cases. Amount, £15 15s. 4½d. (\$76.74).
- (2) Found that time workers were receiving minimum or over, and that proportion of pieceworkers who earned less than the minimum did not appear to be excessive. Complaint not considered to be substantiated.
- (3) Found three time workers had been underpaid. Arrears paid, £2 15s. 3d. (\$13.44). On first visit 23 per cent pieceworkers earned less than minimum; piece rates were in some cases increased, and on second visit only 10 per cent earned less.
- (4) Found six time workers underpaid. Correct rates to be paid in future. Arrears paid, £20 16s. 11d. (\$101.45.)

Proceedings have been taken against employers in four cases in which breaches of the act have been brought to the notice of the Board of Trade, and in each case a conviction was obtained.

The first prosecution was that of an employer in the chain trade for failure to pay wages to three workers at the minimum rates fixed for dollied chain making by the chain trade board. In this case an attempt was made to conceal the infraction of the act by false entries in the wages books. As the court considered that the offenses were serious they imposed fines amounting to £15 (\$73), with £9 9s. (\$45.99) costs; and in addition the defendant was ordered to pay to the workers arrears of wages amounting to £7 15s. 10½d. (\$37.93).

In the second prosecution, that of a Nottingham middlewoman for failure to pay wages at the minimum rates fixed by the lace-finishing trade board, the defendant was fined (£1 \$4.87), with £1 1s. (\$5.11) costs, the magistrates intimating that any future offense would be dealt with severely.

The third prosecution was that of a box manufacturer in East London for failure to pay wages to a female worker at the minimum time rate fixed by the paper-box trade board (Great Britain). In this case the defendant was fined £3 3s. (\$15.33), with £5 5s. (\$25.55) costs, and was also ordered by the magistrate to pay the sum of 17s. (\$4.14) to the worker.

The fourth prosecution was that of a man and his wife, who were carrying on business as subcontractors ("middle people") in the lace-finishing trade, for hindering an investigating officer. The man was fined 10s. (\$2.43) and his wife was acquitted with a caution, the magistrates taking into account the poverty of the defendants.

The act has been in operation for barely three years and a half, and a considerable portion of this time has necessarily been spent in the preliminary work of establishing the trade boards. In the largest of the trades affected (ready-made and wholesale bespoke tailoring) the minimum rates for Great Britain have been obligatory only since February 20, 1913, and in the next largest trade (paper and cardboard box making) the minimum rates for female workers in Great Britain have been obligatory only since September 12, 1912, while the minimum time rates fixed for male workers have not yet been made obligatory.¹ In these circumstances it would appear to be premature at the present time to attempt to give an account of the ultimate effects of the act on the trades to which it has been applied

OPINION OF BRITISH BOARD OF TRADE UPON OPERATION OF ACT.

The following list of questions concerning the operation of the minimum-wage law in England was sent by the New York State factory investigating commission to the Board of Trade at London:²

First. Does the minimum wage become the maximum?

Second. How far are the unfit displaced by such legislation?

Third. Do such laws tend to drive industry from the State?

Fourth. Do they result in decreasing efficiency?

In response the following statement was received:

I am directed by the Board of Trade to say that, as the trade boards act has only been in operation for a comparatively short period, they consider that it is as yet too early to express a definite judgment on its indirect and ultimate results.

The Board are of opinion, however, that provisional replies, based on the experience so far obtained of the working of the act, may be given to the questions contained in your letter as follows:

(1) The Board are not aware of any general tendency among employers to reduce rates to the minimum allowed by law in cases where higher rates have been paid in the past. On the contrary, there is reason to suppose that the better organization of the work-

¹ These rates were made obligatory July 7, 1913.

² Third Report of the New York State Factory Investigating Commission. Appendix III. Minimum-wage legislation, by Irene Osgood Andrews, pp. 243 and 244.

ers, which has been observed to have taken place in the trades to which the act has been applied, tends to prevent the legal minimum rate from becoming in fact the maximum.

(2) So far as the Board are aware, there has been no general dismissal of workers as a result of the fixing of minimum rates; and even where workers have been dismissed on this account, it has frequently been found that this has been due to misunderstanding of the act and not to its actual provisions.

(3) The Board are not aware of any tendency on the part of manufacturers to transfer their business to foreign countries, or, in cases where lower minimum rates have been fixed for Ireland than for Great Britain, to transfer their business from Great Britain to Ireland.

(4) There is no evidence in the possession of the Board to show that the efficiency of workers has been reduced as a result of the fixing of minimum rates of wages. On the contrary, there are indications that in many cases the efficiency of the workers has been increased. The fixing of minimum rates has also resulted in better organization among the employers and in improvements in the equipment and organization of their factories.

At the hearings of the parliamentary committee appointed to consider the extension of the trade boards act to additional trades, Mr. G. S. Barnes, second secretary to the Board of Trade, said July 3, 1913: ¹ "I think you may take it that as a whole the working of the trade boards act has been successful beyond what anybody imagined possible. The employers as a whole are, I think, satisfied, and the workers are satisfied. I believe that the employers as a whole are anxious to pay rather higher wages than they have been paying in some cases in the past, provided that they are protected against other employers undercutting them."

Speaking at the hearings before a similar committee, June 18, 1914, Mr. J. D. Fitzgerald, counsel for the Board of Trade, said: ² "Another thing that weighs also with the Board of Trade is this, that the experience they have had of trade boards that have been already set up has been quite satisfactory. * * * Their action has been beneficial, and so far from injuring the trades, they have given satisfaction alike to employers and employed."

As an indication of the attitude of employers and employees toward the trade boards act, it is significant that upon the Board of Trade's proposal to extend the act to apply to five additional trades in 1913 the proposal with reference to four of these trades was entirely unopposed either by employers or employees. Upon this question of the extension of the act to other trades Mr. Barnes stated ³ that "since these trades have been scheduled we have had communications from a large number of employers that they would like their particular trade put in."

¹ Special Report from the Select Committee on the Trade Boards Act Provisional Orders Bill together with the Proceedings of the Committee and the Minutes of Evidence. London, 1913. H. C. 209, p. 7.

² Report and Special Report from the Select Committee on Trade Boards Act Provisional Order Bill, together with the Proceedings of the Committee, Minutes of Evidence, and an Appendix. London, 1914. H. C. 317, p. 3.

³ Special Report from the Select Committee, etc., p. 8.

TYPICAL DETERMINATION OF A TRADE BOARD.¹

Minimum rates fixed for those branches of the ready-made and wholesale bespoke tailoring trade in Great Britain which are engaged in making garments to be worn by male persons.²

In accordance with regulations made under section 18 of the above act by the Board of Trade, and dated April 27, 1910, the trade board established under the above act for those branches of the ready-made and wholesale bespoke tailoring trade in Great Britain which are engaged in making garments to be worn by male persons, hereby give notice, as required by section 4 (3) of the above act, that they have fixed the following minimum (or lowest) rates of wages:

Minimum-time Rates for Female Workers.

SECTION 1. The minimum (or lowest) time rates for female workers in those branches of the ready-made and wholesale bespoke tailoring trade in Great Britain which are engaged in making garments to be worn by male persons, shall (subject to the provisions of this notice as to female learners) be as follows, clear of all deductions:

(a) For female workers other than home workers, 3½d. (6.6 cents) an hour.

(b) For female home workers, 3½d. (6.6 cents) an hour.

Learners.

SECTION 2. (a) In lieu of the above rates female "learners" (as hereinafter defined) shall, subject to the provisions of this section, receive the following minimum or lowest time rates clear of all deductions, that is to say:

	Wages (per week) of learners commencing at—			
	14 and under 15 years of age.	15 and under 16 years of age.	16 and under 21 years of age.	21 years of age and over.
	1	2	3	4
First 6 months of employment..	s. d. 3 0 (\$0.73)	s. d. 3 8 (\$0.89)	s. d. 5 2 (\$1.26)	First 3 months, 6s. 9d. (\$1.64).
Second 6 months of employment.	4 6 (\$1.10)	5 2 (\$1.26)	6 9 (\$1.64)	Second 3 months, 8s. 4d. (\$2.03).
Third 6 months of employment.	6 0 (\$1.46)	7 3 (\$1.76)	9 5 (\$2.29)	Third 3 months, 10s. 11d. (\$2.66).
Fourth 6 months of employment.	7 3 (\$1.76)	8 10 (\$2.15)	12 6 (\$3.04)	Fourth 3 months, 12s. 6d. (\$3.04).
Fifth 6 months of employment..	8 4 (\$2.03)	10 11 (\$2.66)	-----	
Sixth 6 months of employment.	9 5 (\$2.29)	12 6 (\$3.04)	-----	
Seventh 6 months of employment.	11 5 (\$2.78)	-----	-----	
Eighth 6 months of employment.	12 6 (\$3.04)	-----	-----	

(b) The minimum or lowest time rate for learners under 14 years of age shall be 3s. (73 cents) a week, and on reaching the age of 14 they shall be entitled to the amounts shown in column 1 above as if they had commenced at 14.

(c) The learners' rates are weekly rates based on a week of 50 hours, but they shall be subject to a proportionate deduction or increase according as the number of hours actually spent by the learner in the factory or workshop in any week is less or more than 50.

(d) The advances to be given to learners shall be paid on the first pay days in January and July, the learner being entitled to her first advance on the first of such pay days following her entry into the trade, provided that she has been in the trade at least three months.

¹ Memorandum in reference to the working of the trade boards act presented to Parliament by the Board of Trade May 27, 1913 (H. C. 134), pp. 26-28.

² These rates have been made obligatory by an order of the Board of Trade dated Feb. 20, 1913.

(e) A learner shall cease to be a learner and be entitled to the full minimum time rate for a worker applicable to her under section 1 upon the fulfillment of the following conditions:

Age of entering upon employment.	Conditions.
Under 15 years of age.....	The completion of not less than 3 years' employment, and the attainment of the age of 18 years.
15 and under 16 years of age....	The completion of not less than 2 years' employment, and the attainment of the age of 18 years.
16 and under 21 years of age....	The completion of 2 years' employment.
21 years of age and over.....	The completion of 1 year's employment.

(f) No female learner shall be held to be entitled to the full minimum rate under section 1 until she has attained the age of 18 years, notwithstanding any employment she may have had.

(g) Any female who has been previously employed in any branch of the trade as described in section 1 and has not held a certificate or certified copy certificate and is subsequently taken on as a learner shall count the whole period of such previous employment for the purpose of claiming the time rate at which she is to be paid, and shall have such period of employment entered upon her certificate or certified copy.

SECTION 3. The above rates shall apply to all female workers as specified above who are employed during the whole or any part of their time in any branch of the ready-made and wholesale bespoke tailoring trade which is engaged in making garments to be worn by male persons, but they shall not apply to any persons engaged merely as clerks, messengers, stockroom assistants, warehouse assistants, saleswomen, travelers, packers, parcelers, distributors, cleaners, or to any other persons whose work stands in a relationship to the trade similar to that of the foregoing excluded classes.

SECTION 4. A female learner is a worker who—

(a) Is employed during the whole or a substantial part of her time in learning any branch or process of the trade by an employer who provides the learner with reasonable facilities for such learning; and

(b) Has received a certificate or certified copy certificate issued in accordance with rules from time to time laid down by the trade board and held subject to compliance with the conditions contained in this section, or has made an application therefor which has been duly acknowledged and is still under consideration. The trade board may, if any condition contained in this section is not in fact complied with, cancel the original certificate, whereupon any copy thereof shall become canceled. Notice of such cancellation shall forthwith be given to the learner and her employer.

Provided, That an employer may employ a female learner, on her first employment, in the branch or branches of the trade as above described, without a certificate for a probation period not exceeding four weeks, but in the event of such learner being continued thereafter at her employment the probation period shall be included in her period of learnership.

Provided, That notwithstanding compliance with the conditions contained in this section a person shall not be deemed to be a learner if she works in a room used for dwelling purposes and is not in the employment of her parent or guardian.

Minimum Time Rate for Male Workers.

SECTION A. The minimum (or lowest) time rates for male workers in those branches of the ready-made and wholesale bespoke tailoring trade in Great Britain which are engaged in making garments to be worn by male persons shall (subject to the provisions of this notice as to male learners) be as follows clear of all deductions:

- (1) For male workers other than home workers, 6d. (12.2 cents) an hour.
- (2) For male home workers, 6d. (12.2 cents) an hour.

Learners.

SECTION B. (1) In lieu of the above rates male "learners" (as hereinafter defined) shall receive the following minimum or lowest time rates clear of all deductions; that is to say:

When employed under 15 years of age, 4s. 2d. (\$1.01) a week.

When employed at 15 and under 16 years of age, 6s. 3d. (\$1.52) a week.

When employed at 16 and under 17 years of age, 8s. 4d. (\$2.03) a week.

When employed at 17 and under 18 years of age, 11s. 6d. (\$2.80) a week.

When employed at 18 and under 19 years of age, 14s. 7d. (\$3.55) a week.

When employed at 19 and under 20 years of age, 17s. 8d. (\$4.30) a week.

When employed at 20 and under 21 years of age, 19s. 10d. (\$4.83) a week.

When employed at 21 and under 22 years of age, 21s. 11d. (\$5.33) a week.

Learners commencing employment in the tailoring trade at and over the age of 19 may serve a period of six months at 15s. 8d. (\$3.81) per week and thereafter a period of six months at 19s. 10d. (\$4.83) per week. They shall then receive such rates as their age may entitle them to under the foregoing provisions.

(2) The learners' rates are weekly rates based on a week of 50 hours, but they shall be subject to a proportionate deduction or increase according as the number of hours actually spent by the learner in the factory or workshop in any week is less or more than 50.

SECTION C. The above rates shall apply to all male workers as specified above who are engaged during the whole or any part of their time in any branch of the ready-made and wholesale bespoke tailoring trade which is engaged in making garments to be worn by male persons; but they shall not apply to any persons engaged merely as clerks, messengers, stockroom assistants, warehouse assistants, salesmen, travelers, packers, parcelers, distributors, mechanics, engineers, carpenters, cleaners, and to others whose work stands in a relationship to the trade similar to that of the above-excluded classes.

SECTION D. A male learner is a worker who—

(1) Is employed during the whole or a substantial part of his time in learning any branch or process of the trade by an employer who provides the learner with reasonable facilities for such learning; and

(2) Has received a certificate or certified copy certificate issued in accordance with rules from time to time laid down by the trade board and held subject to compliance with the conditions contained in this section, or has made an application therefor which has been duly acknowledged and is still under consideration. The trade board may, if any condition contained in this section is not in fact complied with, cancel the original certificate, whereupon any copy thereof shall become canceled. Notice of such cancellation shall forthwith be given to the learner and his employer.

Provided, That an employer may employ a male learner on his first employment in the branch or branches of the trade as above described, without a certificate for a probation period not exceeding four weeks, but in the event of such learner being continued thereafter at his employment the probation period shall be included in his period of learnership.

Provided, That notwithstanding compliance with the conditions contained in this section a person shall not be deemed to be a learner if he works in a room used for dwelling purposes and is not in the employment of his parent or guardian.

In totaling up any reckonings, in the aggregate arrived at when paying the rates fixed hereunder, every fraction of a farthing shall count as a farthing.

The expression "home worker" shall be held to mean a worker who works in his or her own home or in any other place not under the control or management of the employer.

TRADE BOARDS IN GERMANY.

The impression that wage boards had been established by law in Germany would appear to be based upon the fact that under the home workers' law of December 20, 1911, also sometimes called the sweat-shop law, provision is made for the establishment by the Federal Council of so-called trade boards (*Fachausschüsse*) for certain branches of industry and certain localities in which home workers are employed.

If the use of this term suggests any powers and duties similar to those imposed by law upon the British trade boards, the term is entirely misleading, for the German trade boards appear to be strictly limited to investigatorial and educative work and to have absolutely no powers of enforcing any suggestion.

The boards, where established under the Federal authority, are to report on the industrial and economic conditions prevalent in their respective trades and districts. On the request of the State and communal authorities they are to give opinions on (1) the execution of the law, and (2) the interpretation of agreements and existing usages for the fulfillment of obligations between employers and home workers. The trade boards must also consider suggestions as to the conditions in their respective trades and districts, encourage plans for improving such conditions, collect information as to the earnings of home workers, render opinions and make suggestions as to the adequacy of such earnings, and encourage the formation of collective agreements.

The boards are to consist of an equal number of representatives of the employers and home workers concerned, together with a chairman and two associates. The chairman must be neither an industrial employer nor a home worker, and both he and the associates must possess technical knowledge of the trade. If women are largely employed as home workers, they must be proportionately represented on the board. The State central authorities decide the number of representatives. They also appoint the chairman, the associates, and, after a hearing of the employers and home workers, one-half of their representatives. The remaining half are chosen by a majority vote of these appointed representatives. Additional regulations as to the establishment and composition of the trade boards may be issued by the Federal Council. The costs of the trade boards must be provided for by the Federal States in whose territory they are created.

MINIMUM WAGE FOR FEMALE WORKERS IN FRANCE.¹

The French Chamber of Deputies at its session of November 13, 1913, passed a bill relating to a compulsory minimum wage for female home workers of the clothing industry. This bill proposes to introduce for the first time into French legislation the principle of a minimum wage and enlarges in a noteworthy manner the rights of trade-unions.

The most important provisions of the law are the following:

The law is applicable to all female home workers on clothing, including hats, shoes, lingerie, embroideries, laces, plumes, and artificial flowers.

Each manufacturer, jobber, and middleman who gives out such labor for home work must keep a register containing the names and addresses of all female workers employed. He must post the piece prices in the waiting rooms as well as in the rooms in which the raw material is handed out and the finished goods are received.

Each female worker is to be furnished with a tablet or book on or in which is to be entered the nature and quantity of the work, the date, and the piece price. This price may not be lower than the one posted. At the delivery of the goods there are to be entered the date, the wages, and the costs borne by the worker. These entries are to be made in duplicate.

The piece prices are to be computed in such a manner that a worker of average ability may earn in 10 hours a wage equal to a minimum determined upon for the occupation and locality by the labor councilors, or, in their absence, by the industrial courts.

The labor councilors or the industrial courts shall determine this minimum wage in such a manner that it shall in no instance be less than two-thirds of the usual local wage paid for the same occupation to female workers employed in shops. In localities where home work exists exclusively, the wage received by female day laborers or that of female workers employed at the same occupation in other comparable localities shall be taken as a basis. The minimum wage determined upon in this manner shall serve as a basis for judgments by the industrial courts in wage disputes submitted to them. The labor council shall revise the minimum wage at least every three years.

The labor councilors may compile wage tables for the various kinds of piecework. These tables are, however, not binding on the indus-

¹ Arbeiter-Zeitung of Vienna, Nov. 21, 1913.

trial courts in the same manner as the minimum wage. Representatives of the employers and workmen are to be called in at the determination of the minimum wage by the industrial court. The justice of the peace shall act as chairman.

The labor councilors and the industrial courts shall publish the minimum wages and wage tables determined upon. If the Government, a trade-union, or a person interested in the trade, appeals within three months against the determination, a central commission in the department of labor, to which shall belong two members of the labor council or industrial court which made the appealed determination, two judges of industrial courts elected for three years—of both these bodies a representative of the employers and of the workmen—and a member of the supreme court as president, shall have final jurisdiction. The minimum wage becomes compulsory three months after its publication or after the decision of the central commission.

The industrial courts shall be competent to decide all disputes arising under this law. The difference between the wages paid and the wages owed to the female worker on the basis of the minimum wage must be paid to her without prejudice to damages which the employer may be adjudged to pay. Each manufacturer, jobber, and middleman is liable for nonpayment by his own fault of the minimum wage.

Associations authorized by decree of the department of labor, and trade-unions of the clothing industry existing in a district, even if composed entirely or in part of shop workers, may bring civil suit for noncompliance with the present law without having to prove any damage.

In case male workmen of the clothing industry who perform at home the same work as female workers receive a lower wage than the minimum determined upon for the matter, they may request that the industrial court establish the same minimum for them as for the female workers.

After a hearing of the supreme advisory labor council the above provisions may by administrative order also be extended to other trades.

TEXT OF MINIMUM WAGE LAWS.

CALIFORNIA.

ACTS OF 1913.

CHAPTER 324.—*An Act regulating the employment of women and minors and establishing an industrial welfare commission to investigate and deal with such employment, including a minimum wage; providing for an appropriation therefor and fixing a penalty for violations of this act.*

SECTION 1. There is hereby established a commission to be known as the Industrial Welfare Commission, hereinafter called the commission. Said commission shall be composed of five persons, at least one of whom shall be a woman, and all of whom shall be appointed by the governor as follows: Two for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years; *Provided, however,* That at the expiration of their respective terms, their successors shall be appointed to serve a full term of four years. Any vacancies shall be similarly filled for the unexpired portion of the term in which the vacancy shall occur. Three members of the commission shall constitute a quorum. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the powers and authority of the commission.

Commission established.

SEC. 2. The members of said commission shall draw no salaries but all of said members shall be allowed \$10 per diem while engaged in the performance of their official duties. The commission may employ a secretary, and such expert, clerical and other assistants as may be necessary to carry out the purposes of this act, and shall fix the compensation of such employees, and may, also, to carry out such purposes, incur reasonable and necessary office and other expenses, including the necessary traveling expenses of the members of the commission, of its secretary, of its experts, and of its clerks and other assistants and employees. All employees of the commission shall hold office at the pleasure of the commission.

Per diem of commissioners.

Employees.

SEC. 3. (a) It shall be the duty of the commission to ascertain the wages paid, the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed in the State of California and to make investigations into the comfort, health, safety and welfare of such women and minors.

Commission to investigate wages, etc.

(b) It shall be the duty of every person, firm or corporation employing labor in this State:

1. To furnish to the commission, at its request, any and all reports or information which the commission may require to carry out the purposes of this act, such reports and information to be verified by the oath of the person, or a member of the firm, or the president, secretary, or manager of the corporation furnishing the same, if and when so requested by the commission or any member thereof.

Employers to furnish reports.

2. To allow any member of the commission, or its secretary, or any of its duly authorized experts or employees, free access to the place of business or employment of such person, firm or corporation for the purpose of making any investigation authorized by this act, or to make inspection of, or excerpts from, all books, reports, contracts, pay rolls, documents, or papers, of such person, firm, or corporation relating to the employment of labor and payment therefor by such person, firm or corporation.

Commission to have access to places and records.

3. To keep a register of the names, ages, and residence addresses of all women and minors employed.

(c) For the purposes of this act, a minor is defined to be a person of either sex under the age of 18 years.

Preliminary
hearings.

SEC. 4. The commission may specify times to hold public hearings, at which times, employers, employees, or other interested persons, may appear and give testimony as to the matter under consideration. The commission or any member thereof shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the fees and mileage fixed by law in civil cases. In case of failure on the part of any person to comply with any order of the commission or any member thereof, or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before any wage board or the commission, it shall be the duty of the superior court or the judge thereof, on the application of a member of the commission, to compel obedience in the same manner, by contempt proceedings or otherwise, that such obedience would be compelled in a proceeding pending before said court. The commission shall have power to make and enforce reasonable and proper rules of practice and procedure and shall not be bound by the technical rules of evidence.

Wage board.

SEC. 5. If, after investigation, the commission is of the opinion that, in any occupation, trade, or industry, the wages paid to women and minors are inadequate to supply the cost of proper living or the hours or conditions of labor are prejudicial to the health, morals or welfare of the workers, the commission may call a conference, hereinafter called "wage board," composed of an equal number of representatives of employers and employees in the occupation, trade, or industry in question, and a representative of the commission to be designated by it, who shall act as the chairman of the wage board. The members of such wage board shall be allowed \$5 per diem and necessary traveling expenses while engaged in such conferences. The commission shall make rules and regulations governing the number and selection of the members and the mode of procedure of such wage board, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of such wage board. The proceedings and deliberations of such wage board shall be made a matter of record for the use of the commission, and shall be admissible as evidence in any proceedings before the commission. On request of the commission it shall be the duty of such wage board to report to the commission its findings, including therein:

Rules for wage
board.

Findings of
wage board.

1. An estimate of the minimum wage adequate to supply to women and minors engaged in the occupation, trade or industry in question the necessary cost of proper living and to maintain the health and welfare of such women and minors.

2. The number of hours of work per day in the occupation trade or industry in question, consistent with the health and welfare of such women and minors.

3. The standard conditions of labor in the occupation, trade or industry in question, demanded by the health and welfare of such women and minors.

Power to fix
wages, etc.

SEC. 6. (a) The commission shall have further power after a public hearing had upon its own motion or upon petition, to fix:

1. A minimum wage to be paid to women and minors engaged in any occupation, trade or industry in this State, which shall not be less than a wage adequate to supply to such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors.

2. The maximum hours of work consistent with the health and welfare of women and minors engaged in any occupation, trade or industry in this State: *Provided*, That the hours so fixed shall not be more than the maximum now or hereafter fixed by law.

3. The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade or industry in this State.

Hearings upon
determinations.

(b) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and acting upon any matters referred to in subsection (a) hereof, the commission shall give public notice by

advertisement in at least one newspaper published in each of the cities of Los Angeles and Sacramento and in the city and county of San Francisco, and by mailing a copy of said notice to the county recorder of each county in the State of such hearing and purpose thereof, which notice shall state the time and place fixed for such hearing, which shall not be earlier than 14 days from the date of publication and mailing of such notices.

(c) After such public hearing, the commission may, in its discretion, make a mandatory order to be effective in 60 days from the making of such order, specifying the minimum wage for women or minors in the occupation in question, the maximum hours: *Provided*, That the hours specified shall not be more than the maximum for women or minors in California; and the standard conditions of labor for said women or minors: *Provided, however*, That no such order shall become effective until after April 1, 1914. Such order shall be published in at least one newspaper in each of the cities of Los Angeles and Sacramento and in the city and county of San Francisco, and a copy thereof be mailed to the county recorder of each county in the State, and such copy shall be recorded without charge, and to the labor commissioner who shall send by mail, so far as practicable, to each employer in the occupation in question, a copy of the order, and each employer shall be required to post a copy of such order in the building in which women or minors affected by the order are employed. Failure to mail notice to the employer shall not relieve the employer from the duty to comply with such order. Finding by the commission that there has been such publication and mailing to county recorders shall be conclusive as to service.

Mandatory orders.

SEC. 7. Whenever wages, or hours, or conditions of labor have been so made mandatory in any occupation, trade or industry, the commission may at any time in its discretion, upon its own motion or upon petition of either employers or employees, after a public hearing held upon the notice prescribed for an original hearing, rescind, alter, or amend any prior order. Any order rescinding a prior order shall have the same effect as herein provided for in an original order.

Reconsideration of orders.

SEC. 8. For any occupation in which a minimum wage has been established, the commission may issue to a woman physically defective by age or otherwise, a special license authorizing the employment of such licensee, for a period of six months, for a wage less than such legal minimum wage; and the commission shall fix a special minimum wage for such person. Any such license may be renewed for like periods of six months.

Special licenses.

SEC. 9. Upon the request of the commission, the labor commissioner shall cause such statistics and other data and information to be gathered, and investigations made, as the commission may require. The cost thereof shall be paid out of the appropriations made for the expenses of the commission.

Labor commissioner to make investigations.

SEC. 10. Any employer who discharges, or threatens to discharge, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor.

Discrimination against employees.

SEC. 11. The minimum wage for women and minors fixed by said commission as in this act provided, shall be the minimum wage to be paid to such employees, and the payment to such employees of a less wage than the minimum so fixed shall be unlawful, and every employer or other person who, either individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than such minimum, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50, or by imprisonment for not less than 30 days, or by both such fine and imprisonment.

Penalty for paying below minimum wage.

SEC. 12. In every prosecution for the violation of any provision of this act, the minimum wage established by the commission as herein provided shall be *prima facie* presumed to be reasonable and lawful, and to be the living wage required herein to be paid to women and minors. The findings of fact made by the commission acting within

Prosecutions.

its powers shall, in the absence of fraud, be conclusive; and the determination made by the commission shall be subject to review only in a manner and upon the grounds following: Within 20 days from the date of the determination, any party aggrieved thereby may commence in the superior court in and for the city and county of San Francisco, or in and for the counties of Los Angeles or Sacramento, an action against the commission for review of such determination. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed a complete service. The commission shall serve its answer within 20 days after the service of the complaint. With its answer, the commission shall make a return to the court of all documents and papers on file in the matter, and of all testimony and evidence which may have been taken before it, and of its findings and the determination. The action may thereupon be brought on for hearing before the court upon such record by either party on 10 days' notice of the other. Upon such hearing, the court may confirm or set aside such determination; but the same shall be set aside only upon the following grounds:

Grounds for setting aside determinations.

- (1) That the commission acted without or in excess of its powers.
- (2) That the determination was procured by fraud.

Upon the setting aside of any determination the court may recommit the controversy and remand the record in the case to the commission for further proceedings. The commission, or any party aggrieved, by a decree entered upon the review of a determination, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the said superior court.

Right to recover.

Sec. 13. Any employee receiving less than the legal minimum wage applicable to such employee shall be entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, notwithstanding any agreement to work for such lesser wage.

Complaints.

Sec. 14. Any person may register with the commission a complaint that the wages paid to an employee for whom a living rate has been established, are less than that rate, and the commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the living wage.

Reports.

Sec. 15. The commission shall biennially make a report to the governor and the State legislature of its investigations and proceedings.

Appropriation.

Sec. 16. There is hereby appropriated annually out of the moneys of the State treasury, not otherwise appropriated, the sum of \$15,000, to be used by the commission in carrying out the provisions of this act, and the controller is hereby directed from time to time to draw his warrants on the general fund in favor of the commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Arbitration during strike or lockout forbidden.

Sec. 17. The commission shall not act as a board of arbitration during a strike or lockout.

Constitutionality of act.

Sec. 18. (a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(b) If any section, subsection, or subdivision of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases is declared unconstitutional.

Scope of act.

Sec. 19. The provisions of this act shall apply to and include women and minors employed in any occupation, trade or industry, and whose compensation for labor is measured by time, piece or otherwise.

Approved May 26, 1913.

CONSTITUTIONAL AMENDMENT ADOPTED NOVEMBER 3, 1914.

SECTION 17½. The legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees. No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon any commission now or hereafter created, such power and authority as the legislature may deem requisite to carry out the provisions of this section.

COLORADO.

ACTS OF 1913.

CHAPTER 110.—*An Act providing for the determination of minimum wages for women and minors.*

SECTION 1. There is hereby created a State wage board, to be composed of three members, at least one of whom shall be a representative of labor, at least one of whom shall be a woman, and one of whom shall be an employer of labor. The members of said board shall be appointed by the governor immediately upon the taking effect of this act, and the term of existence of said board shall be for two years.

Wage board established.

SEC. 2. It shall be the duty of the wage board to inquire into the wages paid to female employees above the age of 18 years and minor employees under 18 years of age in any mercantile, manufacturing, laundry, hotel, restaurant, telephone, or telegraph business in this State, if the board or any member of it may have reason to believe the wages paid any such employees are inadequate to supply the necessary cost of living, maintain them in health, and supply the necessary comforts of life. The wage board shall also inquire into the cost of living in the locality or localities in which the business is carried on and shall take into consideration the financial condition of the business and the probable effect thereon of any increase in the minimum wage paid in different localities, which inquiry and investigation shall be held in the locality affected. After such investigation it shall be the duty of the wage board to fix the minimum wage, whether by time rate or piece rate, suitable for the female employees over 18 years of age in such business or in any or all of the branches thereof and also a suitable minimum wage for minors under 18 years of age employed in the said business. When two or more members of the wage board shall agree upon a minimum-wage determination, the board shall give public notice, by advertisement published once in a newspaper of general circulation in the county or counties in which any such business so affected is located, declaring such minimum-wage determination or determinations and giving notice of a public hearing thereon to be heard in the town or city nearest the place wherein the inadequate wage is found to exist; said hearing to be held not earlier than 30 days from the date of such publication. A copy of such notice shall also be mailed to the person, association or corporation engaged in the business affected. After such public hearing or after the expiration of the 30 days, provided no public hearing is demanded, the wage board shall issue an obligatory order to be effective in 60 days from the date of said order specifying the minimum wages for women or minors, or both, in the occupation affected or any branch thereof, and after such order is effective, it shall be unlawful for any employer in said occupation to employ a female over 18 years of age or a minor under 18 years of age for less than the rate of wages specified for such female or minor. The order shall be published once in a newspaper of general circulation in the county or counties in which any such business affected is located, and a copy of the order shall be sent by mail to the person, association, or corporation engaged in said business; and each such employer shall be required to post a copy of said order in a conspicuous place in each building in which women or minors affected by the order are employed.

Board to investigate wages and cost of living.

Minimum wages to be fixed.

Hearings on wage determinations.

Obligatory orders.

Power of board to subpoena witnesses, etc.

SEC. 3. The board shall, for the purposes of this act, have the power to subpoena witnesses and compel their attendance, to administer oaths, and examine witnesses under oath, and to compel the production of papers, books, accounts, documents and records. If any person shall fail to attend as a witness when subpoenaed by the board or shall refuse to testify when ordered so to do, the board may apply to any district court or county court to compel obedience on the part of such person and such district or county court shall thereupon compel obedience by proceedings for contempt as in case of disobedience of any order of said court.

Payment of witnesses.

SEC. 4. Each witness who shall appear before the board by order of the board shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the district courts of the State.

Record of proceedings.

SEC. 5. A full and complete record shall be kept of all testimony taken by, and of all proceedings had before the board.

Appeal from orders of board.

SEC. 6. Any employer, employee, or other person directly affected by any order of the board fixing and determining a minimum wage in any occupation or industry, shall have the right of appeal from such order to the district court of the State on the ground that such order is unlawful or unreasonable. The evidence considered upon such appeal shall be confined to the evidence presented to the board in the case from the decision in which the appeal is taken, and the order of the board shall remain in full force and effect until such order is reversed or set aside by the district court. In all proceedings in the district court the district attorney shall appear for the board. In all proceedings in the supreme court the attorney general shall appear for the board.

Penalty for violation of act.

SEC. 7. Any person or partnership or corporation employing any female person above the age of 18 years at less than the minimum wage fixed for such persons by this board, and any person, partnership or corporation employing any person of either sex under the age of 18 years at less than the minimum wage fixed for such persons by this board, or violating any other provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than \$100 for each offense, or by imprisonment in the county jail for not more than three months or by both fine and imprisonment.

Discrimination against employees.

SEC. 8. Any employer who discharges or in any other manner discriminates against any employee because such employee has testified, or is about to testify, or because such employer believes that said employee may testify, in any investigation or proceeding relative to the enforcement of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each such misdemeanor.

SEC. 9. Justices of the peace shall have, according to law, jurisdiction within their respective counties of all offenses arising under the provisions of this act.

Right to recover.

SEC. 10. If any employee shall receive less than the minimum wage fixed by this board for employees in the occupation in which said person is employed, he or she shall be entitled to recover in a civil action, the full amount which would have been due said employee if the minimum wage fixed by the board had been paid, together with costs and attorney fees to be fixed by the court, notwithstanding any agreement to work for such lower wage. In such action, however, the employer shall be credited with any wages which have been paid said employee.

Special licenses.

SEC. 11. For any occupation in which a minimum-time rate only has been established, the wage board may issue to any female over the age of 18, physically defective, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage: *Provided*, It is not less than the special minimum wage fixed for said person.

Payment of board and expenses.

SEC. 12. The wage board shall, by and with the consent of the governor, appoint a secretary who may, or may not be a member of the board and who shall give his entire time to the duties of the office, whose salary shall be \$1,200 per annum, payable monthly. The members of said wage board and the secretary thereof shall be paid all necessary traveling and incidental expenses actually incurred in the performance of their official duties, not to exceed \$1,300 per annum. The

board of capitol managers shall provide a suitable room for the use of of said wage board and its secretary. There is hereby appropriated for the payment of the aforesaid salary and expenses, out of any moneys in the State treasury not otherwise appropriated for other ordinary expenses of the departments of the State, the sum of \$5,000; and the auditor of state is hereby authorized and directed to draw his warrants on said fund upon certified vouchers of the chairman of said board attested by its secretary.

SEC. 13. The board shall, within 30 days after the convening of the twentieth general assembly, make a report to the governor and to the general assembly of its investigations and proceedings during the period of its existence, up to and including November 30, 1914.

Report.

SEC. 14. All acts or parts of acts in conflict with any of the provisions of this act are hereby repealed.

Approved May 14, 1913.

MASSACHUSETTS.

ACTS OF 1912.

CHAPTER 706.—*An Act to establish the minimum wage commission and to provide for the determination of minimum wages for women and minors.*

SECTION 1. There is hereby established a commission to be known as the Minimum Wage Commission. It shall consist of three persons, one of whom may be a woman, to be appointed by the governor, with the advice and consent of the council. One of the commissioners shall be designated by the governor as chairman. The first appointments shall be made within 90 days after the passage of this act, one for a term ending October 1, 1913, one for a term ending October 1, 1914, and one for a term ending October 1, 1915; and beginning with the year 1913, one member shall be appointed annually for the term of three years from the 1st day of October and until his successor is qualified. Any vacancy that may occur shall be filled in like manner for the unexpired part of the term.

Commission established.

SEC. 2. Each commissioner shall be paid \$10 for each day's service, in addition to the traveling and other expenses incurred in the performance of his official duties. The commission may appoint a secretary, who shall be the executive officer of the board and to whose appointment the rules of the civil service commission shall not apply. It shall determine his salary, subject to the approval of the governor and council. The commission may incur other necessary expenses not exceeding the annual appropriation therefor, and shall be provided with an office in the statehouse or in some other suitable building in the city of Boston.

Payment of commissioners and expenses.

SEC. 3. It shall be the duty of the commission to inquire into the wages paid to the female employees in any occupation in the Commonwealth, if the commission has reason to believe that the wages paid to a substantial number of such employees are inadequate to supply the necessary cost of living and to maintain the worker in health.

Commission to investigate wages.

SEC. 4. If after such investigation the commission is of the opinion that in the occupation in question the wages paid to a substantial number of female employees are inadequate to supply the necessary cost of living and to maintain the worker in health, the commission shall establish a wage board consisting of not less than six representatives of employers in the occupation in question and an equal number of persons to represent the female employees in said occupation, and of one or more disinterested persons appointed by the commission to represent the public, but the representatives of the public shall not exceed one-half of the number of representatives of either of the other parties. The commission shall designate the chairman from among the representatives of the public, and shall make rules and regulations governing the selection of members and the modes of procedure of the boards, and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and of the determinations of

Wage board.

Rules for wage board.

the boards. The members of wage boards shall be compensated at the same rate as jurors; they shall be allowed the necessary traveling and clerical expenses incurred in the performance of their duties, these payments to be made from the appropriation for the expenses of the commission.

Duties of wage board.

Sec. 5 (as amended by ch. 673, Acts of 1913). The commission may transmit to each wage board all pertinent information in its possession relative to the wages paid in the occupation in question. Each wage board shall take into consideration the needs of the employees, the financial condition of the occupation and the probable effect thereon of any increase in the minimum wages paid, and shall endeavor to determine the minimum wage, whether by time rate or piece rate, suitable for a female employee of ordinary ability in the occupation in question, or for any or all of the branches thereof, and also suitable minimum wages for learners and apprentices and for minors below the age of 18 years. When a majority of the members of a wage board shall agree upon minimum-wage determinations, they shall report such determinations to the commission, together with the reasons therefor and the facts relating thereto.

Commission to review determinations of boards.

Sec. 6 (as amended by ch. 673, Acts of 1913). Upon receipt of a report from a wage board, the commission shall review the same, and may approve any or all of the determinations recommended, or may disapprove any or all of them, or may recommit the subject to the same or to a new wage board. If the commission approves any or all of the determinations of the wage board it shall, after not less than 14 days' notice to employers paying a wage less than the minimum wage approved, give a public hearing to such employers, and if, after such public hearing, the commission finally approves the determination, it shall enter a decree of its findings and note thereon the names of employers, so far as they may be known to the commission, who fail or refuse to accept such minimum wage and to agree to abide by it. The commission shall thereafter publish in at least one newspaper in each county of the Commonwealth a summary of its findings and of its recommendations. It shall also at such times and in such manner as it shall deem advisable publish the facts, as it may find them to be, as to the acceptance of its recommendations by the employers engaged in the industry to which any of its recommendations relate, and may publish the names of employers whom it finds to be following or refusing to follow such recommendations. An employer who files a declaration under oath in the supreme judicial court or the superior court to the effect that compliance with the recommendation of the commission would render it impossible for him to conduct his business at a reasonable profit shall be entitled to a review of said recommendation by the court under the rules of equity procedure. The burden of proving the averments of said declaration shall be upon the complainant. If, after such review, the court shall find the averments of the declaration to be sustained, it may issue an order restraining the commission from publishing the name of the complainant as one who refuses to comply with the recommendations of the commission. But such review, or any order issued by the court thereupon, shall not be an adjudication affecting the commission as to any employer other than the complainant, and shall in no way affect the right of the commission to publish the names of those employers who do comply with its recommendations. The type in which the employers' names shall be printed shall not be smaller than that in which the news matter of the paper is printed. The publication shall be attested by the signature of at least a majority of the commission.

Publication of names of employers.

Court review.

Sec. 7. In case a wage board shall make a recommendation of a wage determination in which a majority but less than two-thirds of the members concur, the commission, in its discretion, may report such recommendation and the pertinent facts relating thereto to the general court.

Wage report to legislature.

Reconsideration of rates.

Sec. 8. Whenever a minimum-wage rate has been established in any occupation, the commission may, upon petition of either employers or employees, reconvene the wage board or establish a new wage board, and any recommendation made by such board shall be dealt with in the same manner as the original recommendation of a wage board.

SEC. 9. For any occupation in which a minimum-time rate only has been established, the commission may issue to any woman physically defective a special license authorizing the employment of the licensee for a wage less than the legal minimum wage: *Provided*, That it is not less than the special minimum wage fixed for that person.

Special licenses.

SEC. 10. The commission may at any time inquire into the wages paid to minors in any occupation in which the majority of employees are minors, and may, after giving public hearings, determine minimum wages suitable for such minors. When the commission has made such a determination, it may proceed in the same manner as if the determination had been recommended to the commission by a wage board.

Minimum wages for minors.

SEC. 11. Every employer of women and minors shall keep a register of the names and addresses of all women and minors employed by him, and shall on request permit the commission or any of its members or agents to inspect the register. The commission shall also have power to subpoena witnesses, administer oaths and take testimony, and to examine such parts of the books and records of employers as relate to the wages paid to women and minors. Such witnesses shall be summoned in the same manner and be paid from the treasury of the Commonwealth the same fees as witnesses before the superior court.

Registers of employees to be kept.

Power of commission to examine witnesses and records.

SEC. 12. Upon request of the commission, the director of the bureau of statistics shall cause such statistics and other data to be gathered as the commission may require, and the cost thereof shall be paid out of the appropriation made for the expenses of the commission.

Bureau of statistics to gather data.

SEC. 13 (as amended by ch. 673, Acts of 1913). Any employer who discharges or in any other manner discriminates against any employee because such employee has testified, or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 and not more than \$1,000 for each offense.

Discrimination against employees.

SEC. 14. The commission shall from time to time determine whether employers in each occupation investigated are obeying its decrees, and shall publish in the manner provided in section 6, the name of any employer whom it finds to be violating any such decree.

Publication of names of employers violating decrees.

SEC. 15. Any newspaper refusing or neglecting to publish the findings, decrees, or notices of the commission at its regular rates for the space taken shall, upon conviction thereof, be punished by a fine of not less than \$100 for each offense.

Penalty for newspapers refusing to publish names.

SEC. 16. No member of the commission and no newspaper publisher, proprietor, editor or employee thereof, shall be liable to an action for damages for publishing the name of any employer in accordance with the provisions of this act, unless such publication contains some willful misrepresentation.

Nonliability for damages.

SEC. 17. The commission shall annually, on or before the first Wednesday in January, make a report to the general court of its investigations and proceedings during the preceding year.

Reports of commission.

SEC. 18. This act shall take effect on the 1st day of July in the year 1913.

Act in effect.

Approved June 4, 1912.

MINNESOTA.

ACTS OF 1913.

CHAPTER 547.—*An Act to establish a minimum wage commission, and to provide for the determination and establishment of minimum wages for women and minors.*

SECTION 1. There is hereby established a commission to be known as the Minimum Wage Commission. It shall consist of three persons, one of whom shall be the commissioner of labor who shall be the chairman of the commission, the governor shall appoint two others, one of whom shall be an employer of women, and the third shall be a woman, who shall act as secretary of the commission. The first appointments shall be made within 60 days after the passage of this act for a term ending

Commission established.

January 1, 1915. Beginning with the year 1915 the appointments shall be for two years from the 1st day of January and until their successors qualify. Any vacancy that may occur shall be filled in like manner for the unexpired portion of the term.

Commission to investigate wages.

SEC. 2. The commission may at its discretion investigate the wages paid to women and minors in any occupation in the State. At the request of not less than 100 persons engaged in any occupation in which women and minors are employed, the commission shall forthwith make such investigation as herein provided.

Employers to keep records of wages and hours.

SEC. 3. Every employer of women and minors shall keep a register of the names and addresses of and wages paid to all women and minors employed by him, together with number of hours that they are employed per day or per week; and every such employer shall on request permit the commission or any of its members or agents to inspect such register.

Public hearings—Power to subpoena.

SEC. 4. The commission shall specify times to hold public hearings at which employers, employees, or other interested persons may appear and give testimony as to wages, profits and other pertinent conditions of the occupation or industry. The commission or any member thereof shall have power to subpoena witnesses, to administer oaths, and to compel the production of books, papers, and other evidence. Witnesses subpoenaed by the commission may be allowed such compensation for travel and attendance as the commission may deem reasonable, to an amount not exceeding the usual mileage and per diem allowed by our courts in civil cases.

When minimum wage must be established.

SEC. 5. If after investigation of any occupation the commission is of opinion that the wages paid to one-sixth or more of the women or minors employed therein are less than living wages, the commission shall forthwith proceed to establish legal minimum rates of wages for said occupation, as hereinafter described and provided.

Minimum wage determination directly by board.

SEC. 6. The commission shall determine the minimum wages sufficient for living wages for women and minors of ordinary ability, and also the minimum wages sufficient for living wages for learners and apprentices. The commission shall then issue an order, to be effective 30 days thereafter, making the wages thus determined the minimum wages in said occupation throughout the State, or within any area of the State if differences in the cost of living warrant this restriction. A copy of said order shall be mailed, so far as practicable, to each employer affected; and each such employer shall be required to post such a reasonable number of copies as the commission may determine in each building or other work place in which affected workers are employed. The original order shall be filed with the commissioner of labor.

Advisory board.

SEC. 7. The commission may at its discretion establish in any occupation an advisory board which shall serve without pay, consisting of not less than 3 nor more than 10 persons representing employers, and an equal number of persons representing the workers in said occupation, and of one or more disinterested persons appointed by the commission to represent the public; but the number of representatives of the public shall not exceed the number of representatives of either of the other parties. At least one-fifth of the membership of any advisory board shall be composed of women, and at least one of the representatives of the public shall be a woman. The commission shall make rules and regulations governing the selection of members and the modes of procedure of the advisory boards, and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and determination of said boards: *Provided*, That the selection of members representing employers and employees shall be, so far as practicable, through election by employers and employees respectively.

Power of advisory board.

SEC. 8. Each advisory board shall have the same power as the commission to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Witnesses subpoenaed by an advisory board shall be allowed the same compensation as when subpoenaed by the commission. Each advisory board shall recommend to the commission an estimate of the minimum wages, whether by time rate or by price [piece] rate, sufficient for living wages for

Advisory board to recommend minimum wage.

women and minors of ordinary ability, and an estimate of the minimum wages sufficient for living wages for learners and apprentices. A majority of the entire membership of an advisory board shall be necessary and sufficient to recommend wage estimates to the commission.

SEC. 9. Upon receipt of such estimates of wages from an advisory board, the commission shall review the same, and if it approves them shall make them the minimum wages in said occupation, as provided in section 6. Such wages shall be regarded as determined by the commission itself and the order of the commission putting them into effect shall have the same force and authority as though the wages were determined without the assistance of an advisory board.

Commission to review and determine minimum wages.

SEC. 10. All rates of wages ordered by the commission shall remain in force until new rates are determined and established by the commission. At the request of approximately one-fourth of the employers or employees in an occupation, the commission must reconsider the rates already established therein and may, if it sees fit, order new rates of minimum wages for said occupation. The commission may likewise reconsider old rates and order new minimum rates on its own initiative.

Reconsideration of rates.

SEC. 11. For any occupation in which a minimum-time rate of wages only has been ordered the commission may issue to a woman physically defective a special license authorizing her employment at a wage less than the general minimum ordered in said occupation; and the commission may fix a special wage for such person: *Provided*, That the number of such persons shall not exceed one-tenth of the whole number of workers in any establishment.

Special licenses.

SEC. 12. Every employer in any occupation is hereby prohibited from employing any worker at less than the living wage or minimum wage as defined in this act and determined in an order of the commission; and it shall be unlawful for any employer to employ any worker at less than said living or minimum wage.

Employment at less than minimum wage prohibited.

SEC. 13. It shall likewise be unlawful for any employer to discharge or in any manner discriminate against any employee because such employee has testified, or is about to testify, or because such employer believes that said employee is about to testify, in any investigation or proceeding relative to the enforcement of this act.

Discrimination against employees.

SEC. 14. Any worker who receives less than the minimum wage ordered by the commission shall be entitled to recover in civil action the full amount due as measured by said order of the commission, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for a lesser wage.

Right to recover.

SEC. 15. The commission shall enforce the provisions of this act, and determine all questions arising thereunder, except as otherwise herein provided.

Commission to enforce act.

SEC. 16. The commission shall biennially make a report of its work to the governor and the State legislature, and such reports shall be printed and distributed as in the case of other executive documents.

Reports.

SEC. 17. The members of the commission shall be reimbursed for traveling and other necessary expenses incurred in the performance of their duties on the commission. The woman member shall receive a salary of \$1,800 annually for her work as secretary. All claims of the commission for expenses necessarily incurred in the administration of this act, but not exceeding the annual appropriation hereinafter provided, shall be presented to the State auditor for payment by warrant upon the State treasurer.

Payment of commission and expenses.

SEC. 18. There is appropriated out of any money in the State treasury not otherwise appropriated for the fiscal year ending July 31, 1914, the sum of \$5,000, and for the fiscal year ending July 31, 1915, the sum of \$5,000.

Appropriation.

SEC. 19. Any employer violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for each offense by a fine of not less than \$10 nor more than \$50 or by imprisonment for not less than 10 nor more than 60 days.

Penalty for violation of act.

SEC. 20. Throughout this act the following words and phrases as used herein shall be considered to have the following meanings respectively, unless the context clearly indicates a different meaning in the connection used:

Definition of terms.

(1) The terms "living wage" or "living wages" shall mean wages sufficient to maintain the worker in health and supply him with the necessary comforts and conditions of reasonable life; and where the words "minimum wage" or "minimum wages" are used in this act, the same shall be deemed to have the same meaning as "living wage" or "living wages."

(2) The term "rate" or "rates" shall mean rate or rates of wages.

(3) The term "commission" shall mean the minimum wage commission.

(4) The term "woman" shall mean a person of the female sex 18 years of age or over.

(5) The term "minor" shall mean a male person under the age of 21 years, or a female person under the age of 18 years.

(6) The terms "learner" and "apprentice" may mean either a woman or a minor.

(7) The terms "worker" or "employee" may mean a woman, a minor, a learner, or an apprentice, who is employed for wages.

(8) The term "occupation" shall mean any business, industry, trade, or branch of a trade in which woman or minors are employed.

Sec. 21. This act shall take effect and be in force from and after its passage.

Approved April 26, 1913.

NEBRASKA.

ACTS OF 1913.

CHAPTER 211.—*An Act to establish a minimum wage commission and provide for the determination of minimum wages for women and minors.*

Commission established.

SECTION 1. There is hereby established a commission to be known as the Nebraska Minimum Wage Commission. The governor is hereby made a member of said commission. Within 30 days from the passage and approval of this act he shall appoint the following additional members: Deputy commissioner of labor; a member of the political science department of the University of Nebraska; one other member who shall be a citizen of the State. At least one member of said commission shall be a woman. Each of the above appointments shall be for a period of two years and may be renewed thereafter. Any vacancy occurring in the commission shall be filled by the governor. Within 10 days after such appointment the commission shall meet and organize by the election of a chairman and secretary.

Payment of expenses of commission.

Sec. 2. Each commissioner shall be paid all traveling and other expenses incurred in the performance of his or her official duties. The commission may incur other necessary expenses not exceeding the biennial appropriation therefor and shall be provided with an office in the statehouse or at the State university.

Commission to investigate wages.

Sec. 3. It shall be the duty of the commission to inquire into the wages paid to the female employees in any occupation in the Commonwealth, if the commission has reason to believe that the wages paid to a substantial number of such employees are inadequate to supply the necessary cost of living and to maintain the worker in health.

Wage board.

Sec. 4. If after such investigation the commission is of the opinion that in the occupation in question the wages paid to a substantial number of female employees are inadequate to supply the necessary cost of living and to maintain the worker in health, the commission shall establish a wage board consisting of not less than three representatives of employers in the occupation in question and of an equal number of persons to represent the female employees in said occupation, and in addition thereto the three appointed members of the commission to represent the public. The chairman of the commission shall be chairman of the wage board and shall make rules and regulations governing the procedure of the board and exercise jurisdiction over all questions arising with reference to the validity of the procedure and the determinations of the board. The secretary of the commission shall be secretary of the wage board and keep such record of hearings and arguments as the wage board shall direct. The members of wage boards

shall be compensated at the same rate as jurors in district courts; they shall be allowed necessary traveling and other expenses incurred in the performance of their duties, these payments to be made from the appropriation for the expenses of the commission.

SEC. 5. The commission may transmit to each wage board all pertinent information in its possession relative to the wages paid in the occupation in question. Each wage board shall take into consideration the needs of the employees, the financial condition of the occupation and the probable effect thereon of any increase in the minimum wages paid, and shall endeavor to determine the minimum wage, whether by time rate or piece rate, suitable for a female employee of ordinary ability in the occupation in question, or for any or all of the branches thereof, and also suitable minimum wages for learners and apprentices and for minors below the age of 18 years. When two-thirds of the members of a wage board shall agree upon minimum wage determinations, they shall report such determinations to the commission, together with the reasons therefor and the facts relating thereto, and also the names, so far as they can be ascertained by the board, of employers who pay less than the minimum wage so determined.

Duties of wage board.

SEC. 6. Upon receipt of a report from a wage board, the commission shall review the same, and report its review to the governor. If the commission approves any or all of the determinations of the wage board it shall, after not less than 30 days' notice to employers paying a wage less than the minimum wage approved, give a public hearing to such employers, and if, after such public hearing, the commission finally approves the determination, it shall enter a decree of its findings and note thereon the names of employers, so far as they may be known to the commission, who fail or refuse to accept such minimum wage and to agree to abide by it. The commission shall, within 30 days thereafter, publish the names of all such employers in at least one newspaper in each county in the Commonwealth, together with the material part of its findings, and a statement of the minimum wages paid by every such employer. Any employer upon filing a declaration under oath in the district court to the effect that compliance with such decree would endanger the prosperity of the business to which the same is made applicable, shall be entitled to a stay of execution of such decree, and a review thereof with reference to the question involved in such declaration. Such review shall be made by the court under the rules of equity procedure, and if it shall be found by the court that compliance with such decree is likely to endanger the prosperity of the business to which the same is applicable, then an order shall issue from said court revoking the same. The type in which the employers' names shall be printed shall not be smaller than that in which the news matter of the paper is printed. The publication shall be attested by the signature of at least a majority of the commission.

Commission to review determinations of board.

Publication of names of employers paying less than minimum.

Court review.

SEC. 7. In case a wage board shall make a recommendation of a wage determination in which a majority, but less than two-thirds, of the members concur, the commission, in its discretion, may report such recommendation and the pertinent facts relating thereto to the legislature.

Wage report to legislature.

SEC. 8. Whenever a minimum-wage rate has been established in any occupation, the commission may, upon petition of either employers or employees, reconvene the wage board or establish a new wage board; and any recommendation made by such board shall be dealt with in the same manner as the original recommendation of a wage board.

Reconsideration of rates.

SEC. 9. For any occupation in which a minimum-time rate only has been established, the commission may issue to any woman physically defective a special license authorizing the employment of the license[e] for a wage less than the legal minimum wage: *Provided*, That it is not less than the special minimum wage fixed for that person.

Special licenses.

SEC. 10. The commission may at any time inquire into the wages paid to minors in any occupation in which the majority of employees are minors, and may after giving public hearings, determine minimum wages suitable for such minors. When the commission has made such a determination, it may proceed in the same manner as if the determination had been recommended to the commission by a wage board.

Minimum wages for minors.

Registers of employees to be kept.

Power of commission to examine witnesses and records.

Statistics.

Discrimination against employees.

Publication of names of employers violating decrees.

Penalty for newspapers refusing to publish findings.

Nonliability for damages.

Reports of commission.

SEC. 11. Every employer of women and minors shall keep a register of the names and addresses of all women and minors employed by him, and shall on request permit the commission or any of its members or agents to inspect the register. The commission shall also have power to subpoena witnesses, administer oaths and take testimony, and to examine such parts of the books and records of employers as relate to the wages paid to women and minors. Such witnesses shall be summoned in the same manner and be paid from the treasury of the Commonwealth the same fees as witnesses before the district court.

SEC. 12. The commission may cause such statistics and other data to be gathered as it may deem desirable, and the cost thereof shall be paid out of the appropriation made for the expenses of the commission.

SEC. 13. Any employer who discharges or in any other manner discriminates against any employee because such employee has testified, or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense.

SEC. 14. The commission shall from time to time determine whether employers in each occupation investigated are obeying its decrees, and shall publish in the manner provided in section 6, the name of any employer whom it finds to be violating any such decree.

SEC. 15. Any newspaper publisher or publishers refusing or neglecting to publish the findings, decrees or notices of the commission at its regular rates for the space taken, shall, upon conviction thereof, be punished by a fine of not less than \$100 for each offense.

SEC. 16. No member of the commission and no newspaper publisher, proprietor, editor or employee thereof shall be liable to an action for damages for publishing the name of any employer in accordance with the provisions of this act, unless such publication contains some willful misrepresentation.

SEC. 17. The commission shall make a report to the governor on or before the first day of November, 1914, and biennially thereafter, covering the results secured and data gathered in its work. It may also make such additional reports in the form of bulletins from time to time as in its judgment shall best serve the public interest.

Approved April 21, 1913.

OREGON.

ACTS OF 1913.

CHAPTER 62.—*An Act to protect the lives and health and morals of women and minor workers, and to establish an industrial welfare commission and define its powers and duties, and to provide for the fixing of minimum wages and maximum hours and standard conditions of labor for such workers, and to provide penalties for violation of this act.*

Whereas, the welfare of the State of Oregon requires that women and minors should be protected from conditions of labor which have a pernicious effect on their health and morals, and inadequate wages and unduly long hours and unsanitary conditions of labor have such a pernicious effect; therefore, be it enacted * * *:

Certain hours, conditions, and wages unlawful.

SECTION 1. It shall be unlawful to employ women or minors in any occupation within the State of Oregon for unreasonably long hours; and it shall be unlawful to employ women or minors in any occupation within the State of Oregon under such surroundings or conditions—sanitary or otherwise—as may be detrimental to their health or morals; and it shall be unlawful to employ women in any occupation within the State of Oregon for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the State of Oregon for unreasonably low wages.

Commission established.

SEC. 2. There is hereby created a commission composed of three commissioners, which shall be known as the "Industrial Welfare Commission"; and the word "commission" as hereinafter used refers to

and means said "industrial welfare commission"; and the word "commissioner" as hereinafter used refers to and means a member of said "industrial welfare commission." Said commissioners shall be appointed by the governor. The governor shall make his first appointments hereunder within 30 days after this bill becomes a law; and of the three commissioners first appointed, one shall hold office until January 1, 1914, and another shall hold office until January 1, 1915, and the third shall hold office until January 1, 1916; and the governor shall designate the terms of each of said three first appointees. On or before the 1st day of January of each year, beginning with the year 1914, the governor shall appoint a commissioner to succeed the commissioner whose term expires on said 1st day of January; and such new appointee shall hold office for the term of three years from said 1st day of January. Each commissioner shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of said commission shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. A majority of said commissioners shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of said commission; and no vacancy shall impair the right of the remaining commissioners to exercise all the powers of said commission. The governor shall, so far as practicable, so select and appoint said commissioners—both the original appointments and all subsequent appointments—that at all times one of said commissioners shall represent the interests of the employing class and one of said commissioners shall represent the interests of the employed class and the third of said commissioners shall be one who will be fair and impartial between employers and employees and work for the best interests of the public as a whole.

SEC. 3. The first commissioners appointed under this act shall, within 20 days after their appointment, meet and organize said commission by electing one of their number as chairman thereof and by choosing a secretary of said commission; and by or before the 10th day of January of each year, beginning with the year 1914, said commissioners shall elect a chairman and choose a secretary for the ensuing year. Each such chairman and each such secretary shall hold his or her position until his or her successor is elected or chosen; but said commission may at any time remove any secretary chosen hereunder. Said secretary shall not be a commissioner; and said secretary shall perform said duties as may be prescribed and receive such salary as may be fixed by such commission. None of said commissioners shall receive any salary as such. All authorized and necessary expenses of said commission and all authorized and necessary expenditures incurred by said commission shall be audited and paid as other State expenses and expenditures are audited and paid. Organization, expenses.

SEC. 4. Said commission is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of hours of employment for women or for minors and what are unreasonably long hours for women or for minors in any occupation within the State of Oregon; (b) Standards of conditions of labor for women or for minors in any occupation within the State of Oregon and what surroundings or conditions—sanitary or otherwise—are detrimental to the health or morals of women or of minors in any such occupation; (c) standards of minimum wages for women in any occupation within the State of Oregon and what wages are inadequate to supply the necessary cost of living to any such women workers and to maintain them in good health; and (d) standards of minimum wages for minors in any occupation within the State of Oregon and what wages are unreasonably low for any such minor workers. Powers of commission.

SEC. 5. Said commission shall have full power and authority to investigate and ascertain the wages and the hours of labor and the conditions of labor of women and minors in the different occupations in which they are employed in the State of Oregon; and said commission shall have full power and authority, either through any authorized representative or any commissioner to inspect and examine any and all books and pay rolls and other records of any employer of women or minors that in any way appertain to or have a bearing upon the ques-

tions of wages or hours of labor or conditions of labor of any such women workers or minor workers in any of said occupations and to require from any such employer full and true statements of the wages paid to and the hours of labor of and the conditions of labor of all women and minors in his employment.

Employers to
keep registers.

SEC. 6. Every employer of women or minors shall keep a register of the names of all women and all minors employed by him, and shall, on request, permit any commissioner or any authorized representative of said commission to inspect and examine such register. The word "minor," as used in this act, refers to and means any person of either sex under the age of 18 years; and the word "women," as used in this act, refers to and means a female person of or over the age of 18 years.

Hearings.

SEC. 7. Said commission may hold meetings for the transaction of any of its business at such times and places as it may prescribe; and said commission may hold public hearings at such times and places as it deems fit and proper for the purpose of investigating any of the matters it is authorized to investigate by this act. At any such public hearing any person interested in the matter being investigated may appear and testify. Said commission shall have power to subpoena and compel the attendance of any witness at any such public hearing or at any session of any conference called and held as hereinafter provided; and any commissioner shall have power to administer an oath to any witness who testifies at any such public hearing or at any such session of any conference. All witnesses subpoenaed by said commission shall be paid the same mileage and per diem as are allowed by law to witnesses in civil cases before the circuit court of Multnomah County.

Conference or
wage board.

SEC. 8. If, after investigation, said commission is of opinion that any substantial number of women workers in any occupation are working for unreasonably long hours or are working under surroundings or conditions detrimental to their health or morals or are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health, said commission may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by said commission and submitted by it to such conference. Such conference shall be composed of not more than three representatives of the employers in said occupation and of an equal number of the representatives of the employees in said occupation and of not more than three disinterested persons representing the public and of one or more commissioners. Said commission shall name and appoint all the members of such conference and designate the chairman thereof. Said commission shall present to such conference all information and evidence in the possession or under the control of said commission which relates to the subject of the inquiry by such conference; and said commission shall cause to be brought before such conference any witnesses whose testimony said commission deems

Duties of con-
ference.

material to the subject of the inquiry by such conference. After completing its consideration of and inquiry into the subject submitted to it by said commission, such conference shall make and transmit to said commission a report containing the findings and recommendations of such conference on said subject. Accordingly as the subject submitted to it may require, such conference shall, in its report, make recommendations on any or all of the following questions concerning the particular occupation under inquiry, to wit: (a) Standards of hours of employment for women workers and what are unreasonably long hours of employment for women workers; (b) standards of conditions of labor for women workers and what surroundings or conditions—sanitary or otherwise—are detrimental to the health or morals of women workers; (c) standards of minimum wages for women workers and what wages are inadequate to supply the necessary cost of living to women workers and maintain them in health. In its recommendations on a question of wages such conference shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will in its judgment be adequate to supply the necessary

cost of living to women workers of average ordinary ability and maintain them in health; and in its recommendations on a question of wages such conference shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which said wages shall be less than the regular minimum wages recommended for the regular women workers in the occupation under inquiry. Two-thirds of the members of any such conference shall constitute a quorum; and the decision or recommendation or report of such a two-thirds on any subject submitted shall be deemed the decision or recommendations or report of such conference.

SEC. 9. Upon receipt of any report from any conference said commission shall consider and review the recommendations contained in said report; and said commission may approve any or all of said recommendations or disapprove any or all of said recommendations; and said commission may resubmit to the same conference or a new conference any subject covered by any recommendations so disapproved. If said commission approves any recommendations contained in any report from any conference, said commission shall publish notice, not less than once a week for four successive weeks in not less than two newspapers of general circulation published in Multnomah County, that it will on a date and at a place named in said notice hold a public meeting at which all persons in favor of or opposed to said recommendations will be given a hearing; and after said publication of said notice and said meeting, said commission may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry the same into effect and require all employers in the occupation affected thereby to observe and comply with such recommendations and said order. Said order shall become effective in 60 days after it is made and rendered and shall be in full force and effect on and after the sixtieth day following its making and rendition. After said order becomes effective and while it is effective, it shall be unlawful for any employer to violate or disregard any of the terms or provisions of said order or to employ any woman worker in any occupation covered by said order for longer hours or under different surroundings or conditions or at lower wages than are authorized or permitted by said order. Said commission shall, as far as is practicable, mail a copy of any such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers work. No such order of said commission shall authorize or permit the employment of any woman for more hours per day or per week than the maximum now fixed by law.

Commission to review recommendations of conference.

SEC. 10. For any occupation in which only a minimum time rate wage has been established, said commission may issue to a woman physically defective or crippled by age or otherwise a special license authorizing her employment at such wage less than said minimum time rate wage as shall be fixed by said commission and stated in said license.

Special licenses.

SEC. 11. Said commission may at any time inquire into wages or hours or conditions of labor of minors employed in any occupation in this State and determine suitable wages and hours and conditions of labor for such minors. When said commission has made such determination, it may issue an obligatory order in the manner provided for in section 9 of this act, and after such order is effective, it shall be unlawful for any employer in said occupation to employ a minor at less wages or for more hours or under different conditions of labor than are specified or required in or by said order; but no such order of said commission shall authorize or permit the employment of any minor for more hours per day or per week than the maximum now fixed by law or at any times or under any conditions now prohibited by law.

Minimum wages, etc., for minors.

SEC. 12. The word "occupation" as used in this act shall be so construed as to include any and every vocation and pursuit and trade and industry. Any conference may make a separate inquiry into and report on any branch of any occupation; and said commission may

Orders for separate occupations or localities.

make a separate order affecting any branch of any occupation. Any conference may make different recommendations and said commission may make different orders for the same occupation in different localities in the State when, in the judgment of such conference or said commission, different conditions in different localities justify such different recommendations or different orders.

Compliance with orders.

SEC. 13. Said commission shall, from time to time, investigate and ascertain whether or not employers in the State of Oregon are observing and complying with its orders and take such steps as may be necessary to have prosecuted such employers as are not observing or complying with its orders.

Assistance by other State offices.

SEC. 14. The "commissioner of labor statistics and inspector of factories and workshops" and the several officers of the "board of inspection of child labor" shall, at any and all times, give to said commission any information or statistics in their respective offices that would assist said commission in carrying out this act and render such assistance to said commission as may not be inconsistent with the performance of their respective official duties.

Rules for enforcement and for conferences.

SEC. 15. Said commission is hereby authorized and empowered to prepare and adopt and promulgate rules and regulations for the carrying into effect of the foregoing provisions of this act, including rules and regulations for the selection of members and the mode of procedure of conferences.

Court review.

SEC. 16. All questions of fact arising under the foregoing provisions of this act shall, except as otherwise herein provided, be determined by said commission, and there shall be no appeal from the decision of said commission on any such question of fact, but there shall be a right of appeal from said commission to the Circuit Court of the State of Oregon for Multnomah County from any ruling or holding on a question of law included in or embodied in any decision or order of said commission, and, on the same question of law, from said circuit court to the Supreme Court of the State of Oregon. In all such appeals the attorney general shall appear for and represent said commission.

Penalty for violation of act.

SEC. 17. Any person who violates any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment in the county jail for not less than 10 days nor more than 3 months or by both such fine and imprisonment in the discretion of the court.

Discrimination against employees.

SEC. 18. Any employer who discharges or in any other manner discriminates against any employee because such employee has testified, or is about to testify, or because such employer believes that said employee may testify, in any investigation or proceedings under or relative to this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$100.

Right of recovery.

SEC. 19. If any woman worker shall be paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of said commission, she may recover in a civil action the full amount of her said minimum wage less any amount actually paid to her by said employer, together with such attorneys' fees as may be allowed by the court and any agreement for her to work for less than such minimum wage shall be no defense to such action.

Report.

SEC. 20. Said commission shall, on or before the 1st day of January of the year 1915 and of each second year thereafter, make a succinct report to the governor and legislature of its work and the proceedings under this act during the preceding two years.

Appropriation.

SEC. 21. There is hereby appropriated out of the general fund of the State of Oregon the sum of \$3,500 per annum, or so much thereof as may be necessary per annum, to carry into effect the provisions of this act and to pay the expenses and expenditures authorized by or incurred under this act.

Filed in the office of secretary of state February 17, 1913.

UTAH.

ACTS OF 1913.

CHAPTER 63.—*An Act to establish a minimum wage for female workers, providing a penalty for violation of the provisions of this act, and providing for its enforcement.*

SECTION 1. It shall be unlawful for any regular employer of female workers in the State of Utah to pay any woman (female) less than the wage in this section specified, to wit:

U n l a w f u l
to pay less than
scale.

For minors, under the age of 18 years, not less than 75 cents per day; for adult learners and apprentices not less than 90 cents per day: *Provided*, That the learning period or apprenticeship shall not extend for more than one year; for adults who are experienced in the work they are employed to perform, not less than \$1.25 per day.

M i n i m u m
wage scale.

SEC. 2. All regular employers of female workers shall give a certificate of apprenticeship for time served to all apprentices.

Certificate of
apprenticeship.

SEC. 3. Any regular employer of female workers who shall pay to any woman (female) less than the wage specified in section 1 of this act shall be guilty of a misdemeanor.

P e n a l t y f o r
paying less than
wage specified.

SEC. 4. The commissioner of immigration, labor and statistics shall have general charge of the enforcement of this act, but violations of the same shall be prosecuted by all the city, State and county prosecuting officers in the same manner as in other cases of misdemeanor.

C o m m i s s i o n e r
of immigration,
labor, and statis-
tics to enforce act.

Approved March 18, 1913.

WASHINGTON.

ACTS OF 1913.

CHAPTER 174.—*An Act to protect the lives, health, morals of women and minors, workers, establishing an industrial welfare commission for women and minors, prescribing its powers and duties, and providing for the fixing of minimum wages and the standard conditions of labor for such workers and providing penalties for violation of the same, and making an appropriation therefor.*

SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

Purpose of act.

SEC. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

C e r t a i n c o n d i t i o n s
and wages
unlawful.

SEC. 3. There is hereby created a commission to be known as the "Industrial welfare commission" for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women.

C o m m i s s i o n e s t a b l i s h e d.

SEC. 4. Said commission shall be composed of five persons, four of whom shall be appointed by the governor, as follows: The first appointments shall be made within 30 days after this act takes effect; one for the term ending January 1, 1914; one for the term ending January 1, 1915; one for the term ending January 1, 1916; and one for the term ending January 1, 1917: *Provided, however*, That at the expiration of their respective terms, their successors shall be appointed by the governor to serve a full term of four years. No person shall be eligible to appointment as a commissioner hereunder who is, or shall have been at any time within five years prior to the date of such appointment a member of

any manufacturers or employers association or of any labor union. The governor shall have the power of removal for cause. Any vacancies shall be filled by the governor for the unexpired portion of the term in which the vacancy shall occur. The commissioner of labor of the State of Washington shall be ex officio member of the commission. Three members of the commission shall constitute a quorum at all regular meetings and public hearings.

Payment of Sec. 5. The members of said commission shall draw no salaries. The commission may employ a secretary whose salary shall be paid out of the moneys hereinafter appropriated. All claims for expenses incurred by the commission shall, after approval by the commission, be passed to the State auditor for audit and payment.

Duties and powers of commission. Sec. 6. It shall be the duty of the commission to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. To this end, said commission shall have full power and authority to call for statements and to examine, either through its members or other authorized representatives, all books, pay rolls or other records of all persons, firms and corporations employing females or minors as to any matter that would have a bearing upon the question of wages of labor or conditions of labor of said employees.

Employers to keep registers. Sec. 7. Every employer of women and minors shall keep a record of the names of all women and minors employed by him, and shall on request permit the commission or any of its members or authorized representatives to inspect such record.

Minor defined. Sec. 8. For the purposes of this act a minor is defined to be a person of either sex under the age of 18 years.

Hearings. Sec. 9. The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the same mileage and per diem allowed by law for witnesses before the superior court in civil cases.

Conference or wage board. Sec. 10. If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employees in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof.

Rules for conference. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employees. The finding and recommendations of the conference shall be made a matter of record for the use of the commission.

Duties of conference. Sec. 11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or it may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in 60 days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occupation affected, and the standard conditions of

Commission to review recommendations of conference.

labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over 18 years of age for less than the rate of wages, or under conditions of labor prohibited for women in the said occupations. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

SEC. 12. Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the commission may at its discretion reopen the question and reconvene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

Reconsideration of orders.

SEC. 13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

Special licenses.

SEC. 14. The commission may at any time inquire into wages, and conditions of labor of minors, employed in any occupation in the State and may determine wages and conditions of labor for such minors. When the commission has made such determination in the cases of minors it may proceed to issue an obligatory order in the manner provided for in section 11 of this act, and after such order is effective it shall be unlawful for any employer in said occupation to employ a minor for less wages than is specified for minors in said occupation, or under conditions of labor prohibited by the commission for said minors in its order.

Minimum wages, etc., for minors.

SEC. 15. Upon the request of the commission the commissioner of labor of the State of Washington shall furnish to the commission such statistics as the commission may require.

Commissioner of labor to furnish statistics.

SEC. 16. Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from \$25 to \$100 for each such misdemeanor.

Discrimination against employees.

SEC. 17. Any person employing a woman or minor for whom a minimum wage or standard conditions of labor have been specified, at less than said minimum wage, or under conditions of labor prohibited by the order of the commission; or violating any other of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than \$25 nor more than \$100.

Penalty for violation of act.

SEC. 17½. Any worker or the parent or guardian of any minor to whom this act applies may complain to the commission that the wages paid to the workers are less than the minimum rate and the commission shall investigate the same and proceed under this act in behalf of the worker.

Investigation of complaints.

SEC. 18. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in section 13, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage, as herein provided for, together with costs and attorney's fees, to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid on account.

Right of recovery

Court appeal. SEC. 19. All questions of fact arising under this act shall be determined by the commission, and there shall be no appeal from its decision upon said question of fact. Either employer or employee shall have the right of appeal to the superior court on questions of law.

Report. SEC. 20. The commission shall biennially make a report to the governor and State legislature of its investigations and proceedings.

Appropriation. SEC. 21. There is hereby appropriated annually out of any moneys of the State treasury not otherwise appropriated, the sum of \$5,000 or as much thereof as may be necessary to meet the expenses of the commission.

Approved by the governor March 24, 1913.

WISCONSIN.

LAWS OF 1913.

CHAPTER 712.—*An Act to create sections 1729s-1 to 1729s-12, inclusive, of the statutes relating to the establishment of a living wage for women and minors, and making an appropriation, and providing a penalty.*

SECTION 1. There are added to the statutes 12 new sections to read:

Definition of terms. of SECTION 1729s-1. The following terms as used in section 1729s-1 to 1729s-12, inclusive, shall be construed as follows:

(1) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.

(2) The term "employee" shall mean and include every person who is in receipt of or is entitled to any compensation for labor performed for any employer.

(3) The term "wage" and the term "wages" shall each mean any compensation for labor measured by time, piece or otherwise.

(4) The term "welfare" shall mean and include reasonable comfort, reasonable physical well-being, decency, and moral well-being.

(5) The term "living wage" shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.

Living wage to be paid. SECTION 1729s-2. Every wage paid or agreed to be paid by any employer to any female or minor employee, except as otherwise provided in section 1729s-7, shall be not less than a living wage.

Penalty. SECTION 1729s-3. Any employer paying, offering to pay, or agreeing to pay to any female or minor employee a wage lower or less in value than a living wage shall be deemed guilty of a violation of sections 1729s-1 to 1729s-12, inclusive, of the statutes.

Commission to determine and fix living wage. SECTION 1729s-4. It shall be the duty of the industrial commission and it shall have power, jurisdiction and authority to investigate, ascertain, determine and fix such reasonable classification, and to issue general or special orders determining the living wage, and to carry out the purposes of sections 1729s-1 to 1729s-12, inclusive, of the statutes. Such investigations, classifications and orders, and any action, proceeding, or suit to set aside, vacate or amend any such order of said commission, or to enjoin the enforcement thereof, shall be made pursuant to the proceedings in sections 2394-41 to 2394-70, inclusive, of the statutes, which are hereby made a part hereof, so far as not inconsistent with the provisions of sections 1729s-1, 1729s-2, 1729s-3, 1729s-4, 1729s-5, 1729s-6, 1729s-7, 1729s-8, 1729s-9, 1729s-10, 1729s-11, and 1729s-12 of the statutes; and every order of the said commission shall have the same force and effect as the orders issued pursuant to said sections 2394-41 to 2394-70, inclusive, of the statutes, and the penalties therein shall apply to and be imposed for any violation of sections 1729s-1, 1729s-2, 1729s-3, 1729s-4, 1729s-5, 1729s-6, 1729s-7, 1729s-8, 1729s-9, 1729s-10, 1729s-11, and 1729s-12 of the statutes.

SECTION 1729s-5. After July 1, 1913, the industrial commission may, upon its own initiative, and after July 1, 1914, the industrial commission shall, within 20 days after the filing of a verified complaint of any person setting forth that the wages paid to any female or minor employee in any occupation are not sufficient to enable such employee to maintain himself or herself under conditions consistent with his or her welfare, investigate and determine whether there is reasonable cause to believe that the wage paid to any female or minor employee is not a living wage. When commission shall act.

SECTION 1729s-6. If, upon investigation, the commission finds that there is reasonable cause to believe that the wages paid to any female or minor employee are not a living wage, it shall appoint an advisory wage board, selected so as fairly to represent employers, employees, and the public, to assist in its investigations and determinations. The living wage so determined upon shall be the living wage for all female or minor employees within the same class as established by the classification of the commission. Advisory wage board.

SECTION 1729s-7. The industrial commission shall make rules and regulations whereby any female or minor unable to earn the living wage theretofore determined upon, shall be granted a license to work for a wage which shall be commensurate with his or her ability. Each license so granted shall establish a wage for the licensee, and no licensee shall be employed at a wage less than the rate so established. Special licenses.

SECTION 1729s-8. 1. All minors working in an occupation for which a living wage has been established for minors, and who shall have no trade, shall, if employed in an occupation which is a trade industry, be indentured under the provisions of sections 2377 to 2386, inclusive, of the statutes. Minors to be indentured.

2. A "trade" or a "trade industry" within the meaning of this act shall be a trade or an industry involving physical labor and characterized by mechanical skill and training such as render a period of instruction reasonably necessary. The industrial commission shall investigate, determine and declare what occupations and industries are included within the phrase a "trade" or a "trade industry." Trade industry.

3. All minors working in an occupation for which a living wage has been established for minors but which is not a trade industry, who have no trade, shall be subject to the same provisions as minors between the ages of 14 and 16 as provided in section 1728c-1 of the statutes.

4. The industrial commission may make exceptions to the operation of subsections 1 and 2 of this section where conditions make their application unreasonable. Exceptions.

SECTION 1729s-9. Every employer employing three or more females or minors shall register with the industrial commission, on blanks to be supplied by the commission. In filling out the blank he shall state separately the number of females and the number of minors employed by him, their age, sex, wages, and the nature of the work at which they are employed, and shall give such other information relative to the work performed and the wages received as the industrial commission requires. Each employer shall also keep a record of the names and addresses of all women and minors employed by him, the hours of employment and wages of each, and such other records as the industrial commission requires. Registration of employers.

SECTION 1729s-10. Any employer who discharges or threatens to discharge, or in any way discriminates, or threatens to discriminate against any employee because the employee has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this act, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for each offense. Discrimination against employees.

SECTION 1729s-11. Each day during which any employer shall employ a person for whom a living wage has been fixed at a wage less than the living wage fixed shall constitute a separate and distinct violation of sections 1729s-1 to 1729s-12, inclusive, of the statutes. Violation of act.

SECTION 1729s-12. Any person may register with the industrial commission a complaint that the wages paid to an employee for whom a Complaints.

living wage has been established are less than that rate, and the industrial commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the living wage.

Sec. 2. This act shall take effect and be in force from and after its passage and publication.

Approved July 31, 1913.

VICTORIA.

FACTORIES AND SHOPS ACT, 1912.

[No. 2386.]

Short title and commencement.

SECTION 1. This act may be cited as the factories and shops act, 1912, and shall come into operation on the 1st day of January, 1913.

PART VII.—SPECIAL BOARDS.

(1) APPOINTMENT OF BOARDS.

Existing boards confirmed.

SECTION 133. (1) Every special board purporting to have been appointed prior to the commencement of this act shall be deemed to have been validly appointed.

Power to appoint special board.

(2) Where a resolution is or has been passed by both Houses of Parliament declaring that it is expedient to appoint any special board to determine the lowest prices or rates which may be paid to any person or persons or classes of persons employed anywhere in Victoria (whether in a factory or not) in any process trade business or occupation or any group thereof specified in the resolution or where any special board has prior to the commencement of this act been appointed for any process trade business or occupation or any group thereof the governor in council may if he thinks fit from time to time—

(a) Appoint one or more special boards for any one of such processes trades businesses or occupations or for any branch or branches thereof or for any group or groups thereof; and

(b) Define the area or locality (including the whole or any part or parts of Victoria) within which the determination of each of such special boards shall be operative; and extend or redefine any such area or locality; and

(c) As between any two or more special boards, adjust the powers which such boards or any of them may lawfully exercise, and for that purpose deprive any special board of any of its powers and confer them upon any other special board.

(3) When any special board is deprived of any of its powers pursuant to this section any determination thereof or of the court of industrial appeals made before such deprivation under any power of which the special board is deprived shall continue in operation until superseded by a determination of the special board upon which such power is conferred, and upon such determination being made shall cease to have effect.

(4) Where under this section the area or locality within which the determination of any special board is to be operative is extended so as to include any part or parts of Victoria outside the Metropolitan district or outside any city town or borough the governor in council if in any case he thinks it necessary may appoint a new special board to take the place of the special board the operation of whose determination is so extended.

(5) Where any new special board is so appointed any determination of the board whose place it takes or of the court of industrial appeals theretofore made shall within the area or locality for which the determination was made continue in operation until superseded by a determination of the new special board and upon such determination being made shall cease to have effect.

(6) Each special board shall consist of not less than 4 nor more than 10 members and a chairman.

SEC. 134. The governor in council may by order published in the Government Gazette direct that any special board may in any regulation determination order or instrument or legal proceedings be described for all purposes by some short title specified in such order.

Short title.

SEC. 135 (as amended by section 25, act No. 2558, November 2, 1914).

(1) The governor in council may by an order published in the Government Gazette extend the powers under this act of any special board so that such board may fix the lowest prices or rates for any process, trade, business, or occupation or part of any such process, trade, business or occupation which in the opinion of the governor in council is of the same or similar class or character as that for which such board was appointed, and such board shall as regards the process, trade, business or occupation mentioned in the extending order in council have all the powers conferred on a special board by this act.

Power to extend scope of special board.

(2) A copy of the Government Gazette containing an order so extending the powers of a special board shall be conclusive evidence of the making of such order and such order shall not be liable to be challenged or disputed in any court whatever.

Evidence.

SEC. 136 (as amended by section 26, act No. 2558, November 2, 1914).

(1) One-half of the members of a special board shall be appointed as representatives of employers and one-half as representatives of employees.¹

Constitution of board.

(2) The representatives of the employers shall be bona fide and actual employers in the trade concerned, or shall have been so for six months during the three years immediately preceding their appointment, and the representatives of the employees shall be actual and bona fide employees in such trade, or shall have been so for six months during the three years immediately preceding their appointment.

(3) All the representatives of employers and employees respectively nominated for any special board shall reside in the area or locality to which the determination of the special board is to be applied; and if any such representative ceases to reside as aforesaid he shall thereupon cease to be qualified as and shall cease to be a member of the board.

Members of boards to reside in locality.

(4) In any case where one-fifth of the employers or employees in any process trade business or occupation carry on or are engaged in such process trade business or occupation outside the metropolitan district as defined in this act one at least of the persons so nominated as representatives of employers and one at least of the persons so nominated as representatives of employees shall be a person who resides and who carries on or is engaged in or has carried on or been engaged in (as the case may be) such process trade business or occupation outside the said metropolitan district.

County representative.

(5) In any case where after the lapse of three months from the date of the order in council for the appointment of any special board the minister is satisfied that a sufficient number of qualified employers or employees can not be found to act as members of the board the governor in council on the advice of the minister may appoint any persons who have been engaged in the trade concerned to be representatives of the employers or the employees on such board.

Appointment of members of special boards.

(6) (a) Appointments as members of any special board shall be for three years only, but any member of a special board may on the expiration of his term of office be reappointed thereto;

Term of office.

(b) The chairman of any special board shall be deemed and taken to be a member thereof; and

(c) The governor in council may at any time remove any member of a special board.

Removal of members.

SEC. 137 (as amended by section 27, act No. 2558, November 2, 1914).

(1) Before appointing the members of any special board the minister may by notice published in the Government Gazette nominate persons as representatives of employers and representatives of employees to be appointed as members of such special board.

Provisions for appointment of representative members.

¹ See also section 162.

² Although the minister has power to nominate whomsoever he pleases within the limitations of section 136 ante, his invariable practice is to consult the parties interested. It is open for any person or association to forward the names of persons suitable for nomination. If such names exceed the number to be appointed, the minister makes a selection, and nominates those selected by publishing their name in the Government Gazette.

(2) Unless within 21 days after the date when such nominations are so published at least one-fifth of the employers or at least one-fifth of the adult employees respectively engaged in the process trade business or occupation subject to such special board give notice in writing to the minister that they object to the appointment of the persons nominated as their representatives (as the case may be) then such persons so nominated may be appointed members of the special board by the governor in council as representatives thereon of the employers or employees (as the case may be).

Duty of employers.

(3) For the purpose of furnishing the information necessary for preparing rolls of electors (none of whom shall be under the age of 18 years) for special boards in any process trade business or occupation not usually or frequently carried on in a factory as defined by this act all employers shall send to the chief inspector their names and addresses and also the names and addresses of all employees not under 18 years of age, in the form or to the effect of the seventh schedule and the chief inspector shall compile voters' rolls therefrom and each employer and each employee shall have one vote.

Any employer failing so to forward his name and address shall not be entitled to vote for representatives of employers on the special board to be elected.

Every employee not under 18 years of age, who produces evidence to the satisfaction of the chief inspector that his ordinary occupation when at work is employment in any process trade business or occupation in regard to which the lowest prices or rates of payment are to be determined by any special board shall notwithstanding that his name and address have not been forwarded by his employer, be enrolled as an elector of representatives of employees on such special board.

The minister may decide whether any process trade business or occupation falls within this subsection.

Decision as to objectors.

(4) The minister shall decide whether persons nominated as representatives have been objected to by at least one-fifth of employers or adult employees (as the case may be) and for that purpose he shall accept the records given by the chief inspector in his latest annual report.

Provided, That in any case where no records are given in the latest annual report of the chief inspector of factories with respect to any persons, likely to be affected by the determination of any such special board the minister if he is satisfied that there is substantial objection to the persons nominated by him as representatives of employers or employees on such special board and notwithstanding that an objection signed by one-fifth of the employers or adult employees, respectively engaged in the process trade business or occupation subject to such special board has not been lodged, may decide that an election shall be held.

Provision for election.

(5) If the minister is satisfied that at least one-fifth of the employers or of the adult employees object within the time aforesaid to the persons nominated as their representatives or that otherwise there is substantial objection then such representatives of employers or such representatives of employees shall subject to the provisions of this act be elected as may be prescribed by regulations¹ made by the governor in council.²

Appointment after nominations.

SEC. 138. If the number of persons nominated as representatives of employers or employees (as the case may be) does not exceed the number of persons to be elected the persons nominated shall be deemed and taken to have been elected and shall be appointed by the governor in council accordingly to be members of the special board.

Vacancies.

SEC. 139. In the event of any vacancy occurring from any cause whatsoever in any special board, the governor in council may without previous nomination or election appoint a person as representative of employers or employees as the case may require (and the person so appointed shall be deemed and taken to have been elected by such employers or employees, as the case may be); and such person shall be so appointed for the unexpired portion of the term of office of the member who dies or resigns or is removed.³

¹ For regulations see p. 228.

² See section 161.

³ It is the practice of the minister to consult the interests of the persons concerned. If the board is sitting when the vacancy occurs, its remaining members usually suggest a suitable person. It is well, therefore, for parties interested to be ready with nominations as soon as a seat on the board becomes vacant.

(2) APPOINTMENT OF CHAIRMEN.

SEC. 140 (1) The members of a special board shall within fourteen days after their appointment nominate in writing some person (not being one of such members) to be chairman of such special board, and such person shall be appointed by the governor in council to such office. Nomination of chairman.

(2) In the event of the minister not receiving such nomination within fourteen days after the appointment of the said members then the governor in council may appoint the chairman on the recommendation of the minister.

(3) POWERS AND FUNCTIONS OF BOARDS. ¹

SEC. 141 (as amended by section 28, act No. 2558, November 2, 1914).

(1) Every special board in accordance with the terms of its appointment—

(a) Shall determine the lowest prices or rates of payment payable to any person or persons or classes of persons employed in the process of trade business or occupation specified in such appointment. Such prices or rates of payment may be fixed at piecework prices or at wages rates or both as the special board thinks fit; Board to determine lowest rates of pay.

(b) Shall determine the maximum number of hours per week for which such lowest wages rates shall be payable according to the nature or conditions of the work; and the wages rates payable for any shorter time worked shall be not less than a pro rata amount of such wages rates and not less than such a rate as may be fixed for casual labor. Board to fix number of hours.

In fixing such lowest prices or rates the special board shall take into consideration the following matters and may (if it thinks fit) fix different prices or rates accordingly— Matters to be considered.

(i) The nature kind and class of work;

(ii) The mode and manner in which the work is to be done;

(iii) The age and the sex of the workers; ²

(iv) The place or locality where the work is to be done;

(v) The hour of the day or night when the work is to be done;

(vi) Whether more than six consecutive days' work is to be done;

(vii) Whether the work is casual as defined by the board; ³

(viii) Any recognized usage or custom in the manner of carrying out the work; and

(ix) Any matter whatsoever which may from time to time be prescribed.

(2) Every special board shall fix higher wages rates to be paid for overtime; and for that purpose it shall exercise the powers set out in any one but not more than one of the paragraphs in this subsection numbered (a), (b), (c), or (d): Special boards to fix overtime rates.

(a) It may fix an overtime rate for any hour or fraction of an hour worked in any week in excess of the number of hours determined for a week's work; or Overtime rates.

(b) It may fix the hour of beginning and the hour of ending work on each day; and in that case shall—

Fix higher wages rates to be paid for any hour or fraction of an hour worked in any week—

(i) Outside the hours so fixed; ⁴

(ii) Within the hours so fixed in excess of the number of hours determined for a week's work; or

(c) It may fix the hour of beginning and the hour of ending each shift; and in that case shall—

Fix the rate to be paid for work done on each shift; and

Fix a higher rate to be paid for each hour or fraction of an hour worked by any employee before or after his shift; or

¹ A board may fix rates for repairing articles. See section 152 post. For additional powers as to apprentices and improvers, see section 182 post.

² As to persons under 21 years of age, other than apprentices or improvers, see section 154 post.

³ According to section 29, act No. 2558, Nov. 2, 1914, casual work shall mean work during any week for not more than one-half the maximum number of hours fixed by the special board in respect of any particular process, trade, business, or occupation and the determination of any special board with respect to casual work shall always be subject to this provision.

⁴ It will be noted that, under paragraphs (1) and (2), two different classes of overtime can be fixed. Under (1) and (2) the boards are bound to fix the number of hours for a week's work, and the wages rate for any time in excess. Under (2) they may fix the times

(d) It may fix a higher rate to be paid for any hour or fraction of an hour worked on any day in a factory before or after the ordinary working hours of the factory.

Special rates for Sundays and holidays.

(3) In addition to the powers conferred by this section every special board may exercise either or both of the following powers, namely:

For time occupied in traveling to and from work.

(a) It may fix special rates for work to be done on a Sunday or public holiday; or¹

Apprenticeship indenture.

Board may vary overtime or hours.

(b) It may fix special rates to be paid to any employee who works away from his employer's place of business for time occupied in traveling between the employer's place of business and work or between the employee's residence and work.

(c) May prescribe the form of apprenticeship indenture to be used;

(d) When in this act or any regulations thereunder the number of the hours of work per week or the overtime rates of pay are fixed for any class or classes of workers, a special board when exercising any of the powers conferred by this section instead of fixing the number of working hours per week of overtime rate for the class or classes of workers to be affected by the determination of such board fixed by the factories and shops acts may fix a different number of working hours or overtime rate as the case may be.

Piecework price.

SEC. 142. Where pursuant to this act by any determination of a special board both a piecework price and a wages rate are fixed for any work, the piecework price shall be based on the wages rate; but no determination shall be liable to be questioned or challenged on the ground that any piecework price is a greater or less amount than such price would be if based upon the wages rate.

Outside work.

SEC. 143. For wholly or partly preparing or manufacturing outside a factory articles of clothing or wearing apparel or boots or shoes a piecework price only shall be fixed, and the board shall on request of any occupier of a factory or shop or place fix a wages rate for any work done by persons operating at a machine used in such factory or shop or place.

Basis for piecework price.

SEC. 144. (1) Any special board instead of specifying the lowest piecework prices which may be paid for wholly or partly preparing or manufacturing any articles may determine that piecework prices based on wages rates fixed by such special board may be fixed and paid therefor subject to and as provided in the next following subsection.

(2) Any employer who pursuant to such determination fixes and pays piecework prices shall base such piecework prices on the earnings of an average worker working under like conditions to those for which the piecework prices are fixed and who is paid by time at the wages rates fixed by such special board. Every such employer shall if required by the chief inspector so to do forward a statement of such prices to the chief inspector.

Offering lower price an offense.

(3) Any person who having fixed a piecework price as in this section provided either directly or indirectly or by any pretense or device pays or offers or permits any person to offer or attempts to pay any person a piecework price lower than the price so fixed by such first-

of beginning and ending work upon each day, and, having done so, must fix a higher rate for all time worked outside those hours. If these two powers were exercised independently of one another, they would clash.

It has been found necessary, when any board wishes to exercise both powers, to adopt a form such as follows:

Time of beginning and ending work.—That the time of beginning and ending work shall be—

Time of beginning, 7.30 a. m.; time of ending, 12 noon on the day on which the half holiday is observed. Time of beginning, 7.30 a. m.; time of ending, 6 p. m. on the other working days of the week.

Overtime.—That the following rates shall be paid for all work done:

(a) Within the hours fixed in clause in excess of 48 hours in any week, time and a quarter.

(b) Outside the hours fixed in clause, time and a quarter.

In many trades it is found better to exercise only the power of fixing overtime rates on the week's work, without fixing the time of beginning and ending. This course has the advantage of elasticity, allowing employers and employees to arrange their hours of work to suit themselves, according to the conditions and locality of their work.

¹ The only days which a wage board has power to name as public holidays are: 1st January (New Year's Day), 26th January (Foundation Day), Good Friday, Easter Saturday, Monday, and Tuesday, 21st April (Eight Hours' Day), 3d June (King's birthday), first Thursday in September (Royal Agricultural Show day, in localities named in the Royal Agricultural Show Act), 25th December (Christmas Day), and 26th December (Boxing Day).

mentioned person or who refuses or neglects to forward a statement of such prices when required to do so by the chief inspector, shall be deemed guilty of a contravention of the provisions of this part.¹

(4) In proceedings against any person for a contravention of the provisions of the two last preceding subsections of this section the onus of proof that any piecework price fixed or paid by such person is in accordance with the provisions of such subsections shall in all cases lie on the defendant.

Burden of proof on defendant.

SEC. 145. When in any determination a special board has fixed a wages rate only for wholly or partly preparing or manufacturing either inside or outside a factory any articles or for doing any work then it shall not be lawful for any person to pay or authorize or permit to be paid therefor any piecework prices, and the receipt or acceptance of any piecework prices shall not be deemed to be payment or part payment of any such wages.

Piecework price forbidden.

SEC. 146. When in any determination a special board has fixed piecework prices for wholly or partly preparing or manufacturing any articles and in the description of the work in respect of which such piecework price is to be paid such board enumerates several operations, and when any one or more of such operations is by the direction or with the expressed or implied consent of the occupier of the factory or his manager or foreman or agent omitted, such omission shall not affect the price to be paid in connection with the particular work, but such price shall, unless otherwise provided in such determination, be that fixed as the price for the whole work described.

Effect on piecework price of varying usual course.

SEC. 147. Notwithstanding anything contained in this act the price or rate of payment to be fixed by any special board for wholly or partly preparing or manufacturing any article of furniture² shall wherever practicable be both a piecework price and a wages rate. The piecework price shall be based on the wages rate fixed by such board.

Piecework price and wages rate.

SEC. 148. Where it appears to be just and expedient special wages rates may be fixed for aged infirm or slow workers by any special board.³

Special rates.

SEC. 149. All powers of any special board may be exercised by a majority of the members thereof.

Exercise of powers.

SEC. 150. During any vacancy in a special board (other than in the office of chairman) the continuing members may act as if no vacancy existed, provided no member of the board objects.⁴

Vacancies.

SEC. 151. The chairman of any special board may require any person (including a member of a special board) giving evidence before a board to give his evidence on oath and for such purpose shall be entitled to administer an oath accordingly to such person.

Chairman to administer oaths.

SEC. 152. A special board shall have power to determine the lowest prices or rates to be paid to any person or persons or classes of persons employed in repairing—

Prices for repairing.

(a) Any articles of clothing or wearing apparel or furniture in respect to which such board may make a determination; or

(b) Any articles which are subject to the determination of a special board for any process trade or business.

SEC. 153. Where by the determination of a special board the wages of an apprentice or of an improver are to vary in accordance with his experience or length of employment in his trade, then for the purpose of determining the wages he is entitled to receive, any time during which such apprentice or improver has worked at his trade shall be reckoned in his length of employment in such trade.

Wages of apprentices.

SEC. 154. When fixing the wages rate to be paid to persons (other than apprentices or improvers) under 21 years of age for any particular class of work any special board may fix different rates having regard to the length of experience of such persons in such particular class.

Varying rates.

SEC. 155. No special board shall sit during ordinary working hours in any trade except by mutual agreement of the representatives of the employers and employees on the board, or by the direction of the minister.

Board not to sit during working hours.

¹ Penalty, section 226.

² For additional powers of furniture board, see sections 152 and 156 post.

³ Very few boards have exercised their powers under this section. Under section 202 the chief inspector can grant a license to an old, slow, or infirm worker to work for less than the minimum wage, but it is questionable whether in case a board had fixed rates, the chief inspector could legally grant a license to work for anything less than the rate fixed by the board.

⁴ In practice the boards do not usually decide important points during a vacancy.

(4) MISCELLANEOUS PROVISIONS AS TO SPECIAL BOARDS.

Additional powers for furniture board.

SEC. 156. The special board heretofore appointed with regard to articles of furniture may also determine the lowest prices or rates which may be paid to female workers employed as upholstresses whether as carpet hands table hands or drapery hands, also to male persons employed in planning and laying carpets or linoleums or floor cloths or fixing draperies or making and fixing window venetian and wire blinds if a resolution shall have been passed by both houses of Parliament declaring it is expedient for the special board so to do.

Rates fixed by boards for engine drivers, etc., to supersede rates fixed by other boards for same classes.

SEC. 158. (1) Special boards may be appointed in order to determine the lowest prices or rates which may be paid to any person or persons or classes of persons wheresoever employed in the process trade or business of either the whole or any part of the ironworking trade (for which a special board has not been constituted) including—

- (a) Engineering.
- (b) Boiler making.
- (c) Blacksmithing.
- (d) General ironwork.

(2) The lowest prices or rates which may be determined under and pursuant to the factories and shops acts by any special board appointed—

In the occupation of a fireman, boiler attendant, or engine driver in connection with the use of steam boilers or steam engines other than steam boilers or steam engines connected with mines; or

Under the provisions of paragraphs (a), (b), (c), and (d) of this section—

for any person or persons or classes of persons shall be the lowest prices or rates to be paid to such person or persons or classes of persons wheresoever employed, notwithstanding that any other rates are determined with respect to such person or persons or classes of persons by any other special board.

Extension of powers of board for engine drivers.

SEC. 159. (1) Any special board appointed—

(a) In the occupation of a fireman boiler attendant or engine driver in connection with the use of steam boilers or steam engines other than steam boilers or steam engines connected with mines; or

(b) In the occupation of a fireman boiler attendant or engine driver in connection with a steam engine or steam boiler in or about mines of every kind—

is hereby given power to determine the lowest prices or rates which may be paid to any person or persons or classes of persons employed in the occupation of assistant engine driver greaser or trimmer in connection with the use of steam engines or steam boilers.

(2) Such special board may exercise all the powers conferred on special boards under this act so far as any person or persons or classes of persons mentioned in this section are concerned.

Extension of powers of carters board.

SEC. 160. (1) Notwithstanding anything contained in this act, the carters board appointed on the 1st day of December 1909 is hereby given power to determine the lowest prices or rates which may be paid to any person or persons or classes of persons employed in or in connection with any stable (other than a livery stable) in which are stabled the horses used in his business trade or occupation by any person subject to the determination of the said special board.

(2) Such special board may exercise all the powers conferred on special boards under this act so far as any such person or persons or classes of persons mentioned in this section are concerned.

Special board for furniture trade.

SEC. 161. Notwithstanding anything contained in this act the members of any special board to determine or fix the lowest price or rate which may be paid to any person for wholly or partly preparing or manufacturing any particular articles of furniture shall not be elected, and the governor in council may from time to time appoint such special board.

Men's and boys' clothing board.

SEC. 162. In the case of the special board for men's and boys' clothing, the representatives of the employers shall consist of three representatives of makers of ready-made clothing and two of makers of order clothing, and the rolls for any election of such respective representa-

tives shall be prepared and votes given in such manner as may be prescribed.

SEC. 163. Notwithstanding anything contained in this act the special board called the iron molders board appointed on the seventeenth day of December one thousand nine hundred and one is hereby given power to determine the lowest prices or rates which may be paid to any person or persons or classes of persons employed in the process trade or business of a steel molder and to exercise all the powers conferred on special boards under this act so far as the process, trade, or business of a steel molder is concerned.¹

Extension of powers of the iron molders' board.

2. (1) (added by act No. 2447 of December 31, 1912). In addition to the powers it already possesses the special board heretofore appointed and called the hotel employees board is hereby given power to either—

(a) Fix prices and rates to be paid to employees without taking into consideration either board or lodging; or

(b) Fix prices and rates to be paid to employees varying according to whether full or partial board or lodging is received by the employee.

(2) When the board makes a determination having exercised either of these powers it shall be an offence for any employer to accept any payment from any employee under the jurisdiction of the said board for either board or lodging.

(5) DURATION, PUBLICATION, AND APPLICATION OF DETERMINATIONS OF SPECIAL BOARDS AND COURT OF APPEALS.

SEC. 164. Any price or rate determined by any special board shall from a date (not being within 30 days of such determination)² fixed by such board, be and remain in force until amended by a determination of such special board; but such determination may at any time be amended or revoked by the court of industrial appeals.

Price or rate to remain.

SEC. 165. (1) The determination of any special board shall be signed by the chairman thereof and published in the Government Gazette and shall apply to the area or locality (including the whole or any part or parts of Victoria) defined by the governor in council as the area or locality within which the determination of such special board shall be operative.³

Application of determination.

(2) Every amendment of any determination of any special board at any time made shall apply to the same part or parts of Victoria as the determination amended.

SEC. 166 (as amended by act No. 2447 of December 31, 1912). No determination of a special board shall prevent the sons or daughters of any employer being employed by him in any capacity whether he has or has not the full number of apprentices and improvers, and he shall not be bound to pay his sons and daughters the rates fixed by any determination.

Children of employer.

¹ The following provisions respecting the coal miners' board have been added by section 30, act No. 2558, November 2, 1914:

(1) In addition to the powers it already possesses the special board heretofore appointed and called the coal miners board may if it thinks fit as part of its determination make rules regulating the cavilling for places which are worked at piecework prices on any coal mine.

(2) Such cavilling shall be carried out by the employees affected.
(3) Any person guilty of any contravention of any such rules or of any failure to carry out the decision or requirements of any such cavil shall on information laid by any person aggrieved be liable on conviction by any court of petty sessions consisting of a police magistrate with or without justices to a penalty of not more than £50 (\$243.33).

² It may be noted that it is only a price or rate that must stand for 30 days. Any part of a determination which does not fix a price or rate apparently can be brought into force without any period of waiting. Although this section prevents a price or rate coming into force until after the lapse of 30 days, nothing in the factories and shops acts requires preliminary notice. In practice, the department endeavors to give reasonable notice in the Government Gazette, but there have been instances when circumstances have rendered that impossible, and the determination has come into force immediately on being published.

³ There is nothing in this section to indicate upon whom the duty lies of publishing a determination in the Government Gazette. The amended determination of the hair-dressers board was sent to the minister of labor in December, 1911. The minister refused to gazette it. Application was made to Mr. Justice Cussen for a mandamus. The judge refused the application.

Payment for two or more classes of work.

SEC. 167. Where any person is employed to perform two or more classes of work to which a rate fixed by a special board is applicable then such person shall be paid in respect of the time occupied in each class of work at the rate fixed by the board for such work.¹

Rate of wages throughout day.

SEC. 168. When any person is employed during any part of a day for an employer at work for which a special board has fixed a wages rate then all work whatever done by such person during such day for such employer whether inside or outside a factory or shop or place whatsoever or wheresoever shall be paid for at the same wages rate.

Determination to be posted.

SEC. 169. There shall be kept printed, painted, or affixed in legible Roman characters, in some conspicuous place at or near the entrance of each and every factory or shop or place to which the determination of a special board applies, in such a position as to be easily read by the persons employed therein, a true copy of the determination of the special board as to the lowest prices or rates of payment determined by such board.

Employees not to be paid in goods.

SEC. 170 (as amended by section 43, act No. 2558, November 2, 1914). Where a piecework price or a wages rate has been fixed by the determination of any special board for wholly or partly preparing or manufacturing either inside or outside any factory any articles or for doing any work no person shall either directly or indirectly require or compel any person affected by such determination to accept goods of any kind or board and lodging in lieu of money or in payment or part payment for any work done or wages earned and the receipt or acceptance of any goods or board and lodging shall not be deemed to be payment or part payment for any such work or of any such wages.

(6) VALIDITY OF DETERMINATION.

Determination challengeable before the supreme court only.

SEC. 171. (1) If any person desires to dispute the validity of any determination of any special board made or purporting to have been made under any of the provisions of this act or any act repealed thereby it shall be lawful for such person to apply to the supreme court upon affidavit for a rule calling upon the chief inspector to show cause why such determination should not be quashed either wholly or in part for the illegality thereof; and the said court may make the said rule absolute or discharge it with or without costs as to the court shall seem meet.

(2) Every determination of any special board shall unless and until so quashed have and be deemed and taken to have the like force validity and effect as if such determination had been enacted in this act, and shall not be in any manner liable to be challenged or disputed; but any such determination may be altered or revoked by any subsequent determination under this act.²

(7) SUSPENSION OF DETERMINATION.

Power to suspend.

SEC. 172. (1) Notwithstanding anything contained in this act the governor in council may at any time for such period or periods as he thinks fit not exceeding six months in the whole by order published in the Government Gazette suspend the operation of the determination of any special board.³ When the operation of any determination (whether

¹ This section imposes the duty upon the employer of paying an employee in accordance with the period of time occupied under each determination, or under different parts of the same determination. In cases where several determinations are operative this may become a difficult matter, and necessitates the times being carefully kept and properly booked. It was the difficulty of carrying out the provisions of this section that induced the appointment of the country shop assistants board, which fixes a flat rate for all shop assistants in the districts to which the determination extends, whether they be drapers, grocers, or fancy goods sellers, etc., as it was considered impossible to allocate the time in a country store to each of the many classes of employment.

Compare section 141 (b) as to payment of a pro rata amount for less hours worked than those fixed by the board and section 168.

² The court of industrial appeals has power to amend a special board's determination. (See section 176 (6).)

No change should be made in the determination of a board or of the court of industrial appeals unless on some ground which may reasonably be considered as permanent, or at least likely to last for some considerable time. Mr. Justice Hood, *In re the Bread Board*, 13 A. L. R., 589.

³ This provision became law on Sept. 27, 1897, by virtue of section 6 of the factories and shops act, 1897 (No. 1518), and the power of suspension was exercised on only one occasion. On Nov. 25, 1897, the governor in council suspended the first determination of the boot board, which was made on Nov. 3, 1897, and was to come into force on Nov. 29, 1897.

published in the Government Gazette or not) is so suspended it shall be the duty of such special board to forthwith hear receive and examine evidence as to such determination, and thereupon such special may either adhere to the said determination or may make such amendments therein as to such board seems proper.

(2) In the event of such special board making any such amendments, such determination as so amended shall forthwith be published in the Government Gazette and shall for all purposes be deemed and taken to be the determination of such special board from such date as may be fixed in such amended determination, and the suspended determination shall thereupon have no further force or effect.

(3) In the event of such special board notifying the minister that such board adheres to its determination without amendment such suspension of the operation of such determination shall by an order in council published in the Government Gazette be revoked from such date not later than 14 days as may be fixed in such order.

SEC. 173. Where the minister is satisfied that an organized strike or industrial dispute is about to take place or has actually taken place in connection with any process trade business occupation or employment as to any matter which is the subject of a determination of a special board or of the court of industrial appeals the governor in council may by order published in the Government Gazette suspend¹ for any period not exceeding 12 months the whole or any part or parts of such determination so far as it relates to the matter in reference to which such organized strike or industrial dispute is about to take place or has taken place, and such suspension may at any time by an order published in the Government Gazette, be removed by the governor in council or altered or amended in such manner as he thinks fit.

PART VIII.—COURT OF INDUSTRIAL APPEALS.

SEC. 174 (as amended by section 51, act No. 2558, November 2, 1914).
(1) There shall be a court of industrial appeals for deciding all appeals against a determination of a special board and for dealing with any determination of a special board referred to the court by the minister.

(2) Such court shall consist of a president and two other persons.

(3) A court of industrial appeals consisting of the president and of two other persons as aforesaid shall be constituted from time to time as occasion requires by order in council published in the Government Gazette.

(4) (a) The president—

(i) Shall be such one of the judges of the supreme court as the governor in council appoints;

(ii) Shall be entitled to hold office as president for such period as the governor in council thinks fit; and

(iii) Shall sit in every court of industrial appeals constituted from time to time.

(b) The two other persons, constituting a court of industrial appeals shall be such persons as are appointed by the governor in council upon nomination as hereinafter provided; but they shall act only in the court of industrial appeals for which they are appointed.

(5) (a) When a determination of a special board is appealed against in accordance with the provisions of this act or is referred by the minister for the consideration of the court of industrial appeals then within 21 days from the date of the appeal or the reference (as the case may be)—

The representatives of the employers on such special board shall nominate one person to represent the employers, and

The representatives of the employees shall nominate one person to represent the employees.

(b) Nominations shall be made in writing and shall be forwarded to the minister.

(c) Only persons who are bona fide and actually engaged in the trade concerned or have been so engaged for at least six months during the three years immediately preceding such nomination shall be eligible for nomination.

¹ The power of suspension under section 173 has never been exercised.

Default of nomination.	(6) If default is made in nominating an eligible person to represent the employers or the employees (as the case may be) or if any vacancy in a court occurs by reason of death, resignation, incapacity, refusal to act, or otherwise, the minister may nominate some similarly qualified person to represent the employers or the employees (as the case may require) on such court.
Vacancies.	
President and two other persons to hear appeals and references.	(7) The president and the two other persons constituting a court of industrial appeals shall hear and determine every appeal and reference to such court; and subject to this act a majority shall decide.
Remuneration of persons representing employers and employees on court.	(8) Every person appointed to represent the employers or the employees on a court of industrial appeals shall be paid a fee of £2 (\$9.73) for every full day of attendance at such court.
Registrar.	(9) (a) Subject to the public service acts the governor in council may appoint a registrar of the court of industrial appeals who shall be an officer of the factories branch of the department of the chief secretary. (b) The registrar shall attend the sittings of the court of industrial appeals.
Rules of practice.	(10) The governor in council may make general rules to carry into effect the provisions of this act with respect to the court of industrial appeals and in particular with respect to the summoning of and procedure before any such court and the publication of such rules. Subject to such rules (if any) the court may regulate its own procedure. (11) In the construction of the factories and shops acts any reference to the court of industrial appeals shall (unless inconsistent with the context or subject-matter) be deemed to include a court of industrial appeals constituted from time to time as aforesaid.
Principles as to past determinations.	Sec. 175. Where any determination made by a special board either before or after the commencement of this act is being dealt with by the court, such court shall consider whether the determination appealed against has had or may have the effect of prejudicing the progress maintenance of or scope of employment in the trade or industry affected by any such price or rate; and if of opinion that it has had or may have such effect the court shall make such alterations as in its opinion may be necessary to remove or prevent such effect and at the same time to secure a living wage to the employees in such trade or industry who are affected by such determination.
Living wage.	
Appeal to court.	Sec. 176. (1) Notwithstanding anything contained in this act a majority of the representatives of employers or a majority of the representatives of employees on any special board or any employer or group of employers who employ not less than 25 per cent of the total number of the workers in any trade or 25 per cent or more of the workers in any trade, may at any time in the prescribed manner appeal against such determination to the court. For the purposes of this subsection the court shall accept the records given by the chief inspector in his latest annual report. ¹ (2) The minister may without appeal at any time after the making of a determination by a special board refer such determination for the consideration of the court and may also refer any appeal made as hereinbefore provided for the consideration of the court. (3) No appeal against or reference to the court of a determination which has been published in the Government Gazette shall have the effect of suspending or delaying the operation of such determination. (4) Every determination of a special board referred to the court by the minister and such documents relating thereto as may be deemed necessary shall be forwarded by the chief inspector to the registrar of the court. (5) Except as hereinafter provided no barrister and solicitor or agent shall be allowed to appear before or be heard by the court. By the direction of the court or with the consent of both parties to the appeal or reference either party may at its own cost be represented by a barrister and solicitor or agent. In appeals by a minority of employers or

¹ The power given by this section is to be distinguished from the power to challenge a determination before the supreme court under section 171 post, in which latter case it is only challengeable for illegality. While the court is considering the determination the board has no powers whatever, nor has it any power to alter or amend the determination afterwards until such time as it obtains leave to do so from the court under subsection (9) of this section. Compare section 180.

employees as provided under subsection (1) of this section the court may give such directions for the representation of parties as may in the circumstances appear to be proper.

(6) The court shall have and may exercise all or any of the powers conferred on a special board by this act and may either increase or decrease any prices or rates of payment (whether piecework prices or wages rates) and shall have full power to amend the whole or any part of any determination of a special board.¹

(7) The court shall have and may exercise in respect of the summoning sending for and examining of witnesses, documents and books in respect of persons summoned or giving evidence before the court the same powers as are by the evidence act 1890 conferred on a board or commission appointed or issued by the governor in council: *Provided, however,* That every summons to attend the court may be signed by the registrar.

(8) No evidence relating to any trade secret or to the profits or financial position of any witness or party shall be disclosed or published without the consent of the person entitled to the trade secret or non-disclosure.

(9) The determination of the court shall be final and without appeal and may not be reviewed or altered by a special board without leave of the court, but the court if satisfied upon affidavit that a prima facie case for review exists may either give such leave or may direct a rehearing before the court, when the court may itself alter or amend its determination.

(10) The determination of the court shall be forwarded to the minister by the registrar.

¹ An appeal to the court of industrial appeals from the determination of a wages board is in the nature of a rehearing, and the court is not confined to a consideration of the materials which were before the board in coming to a conclusion as to what should be the minimum wage in the trade, process, or business for which the special board was appointed. *Mr. Justice Hood, In re the Bread Board, 13 A. L. R. 589. Mr. Justice Hodges, In re the Ice Board, 16 A. L. R. 46.*

Appended is a list of the cases in which determinations were referred to the court of industrial appeals.

On September 14, 1904, an appeal was made to the court by a group of six employers against the determination of the artificial manure board on the ground that the wage for adults, 40s. 6d. (\$9.85), was too high, and it was suggested that 36s. (\$8.76) be not exceeded. The court fixed the wages of adults at 36s. (\$8.76) per week.

On September 17, 1906, the determination of the fellmongers board was appealed against by the representatives of employers on that board, who stated that the hours should be 54, and not 48, and that the proportion of improvers should be increased. The court fixed the number of hours per week at 54, but did not alter the proportion of improvers.

Again, on October 2, 1906, the court was appealed to by the employees, and as a result, in 1909 the court fixed the hours at 48 per week instead of 54, and some of the rates fixed at 42s. (\$10.22) were amended to 45s. (\$10.95).

On October 11, 1906, the representatives of employers on the printers' board appealed against the board's determination, stating that the condition of the trade did not then warrant an increase in wages. The court dismissed the appeal and upheld the determination of the board.

The starch board being unable to arrive at a determination, the matter of determining the wages of the employees in that trade was referred by the minister of labor to the court of industrial appeals, and the court drew up a determination, which came into force on June 29, 1907.

On August 15, 1907, the employers' representatives on the bread board appealed against the increase in wages in the determination of the board. The court dealt with the matter, and in its determination, which came into force on September 15, 1907, the minimum wage of 54s. (\$13.14) was altered to 50s. (\$12.17) per week.

On November 12, 1909, an appeal against the determination of the ice board was made by the representatives of employers on that board, who considered that the rate for chamber hands, 1s. 3d. (30.4 cents) was too high. The court amended the wage and fixed it at 1s. (24.3 cents) per hour.

On November 16, 1909, three representatives of employers on the hairdressers' board appealed against the determination of their board, on the grounds that the minimum wages of certain male and female workers were too high and that the proportion of improvers was too low. As a result of their representations, the proportion of improvers was amended by the court, but the minimum wages fixed for males and females were upheld.

On July 24, 1912, an appeal was lodged by the representatives of employers on the boilermakers' board against a rate of 54s. (\$13.14) fixed for a certain class of laborers. A supplementary appeal was lodged on August 15, 1912, against a rate of 48s. (\$11.68) fixed for another class of laborers. The court fixed four rates for laborers at 54s., 52s., 50s., and 48s. (\$13.14, \$12.65, \$12.17, and \$11.68), respectively.

On December 21, 1912, the minister of labor referred the first determination of the commercial clerks' board for the consideration of the court, more particularly with regard to rates to be paid to female typewriters. No decision has yet been given.

Publications, etc. SEC. 178 (as amended by section 52, act No. 2558, Nov. 2, 1914).

(1) The minister shall cause each determination of the court to be published in the Government Gazette and such determination shall apply to every part of Victoria to which the referred determination applies or is expressly applied.

(2) The production before any court judge or justice of a copy of the Government Gazette containing a determination of the court shall be conclusive evidence of the making and existence of such determination and of the constitution of such court and of all preliminary steps necessary to the making of such determination.

(3) The provisions of this act for or relating to the enforcement of any determination of a special board shall equally apply to any determination made by the court, and such provisions shall with such substitutions as may be necessary be read and construed accordingly.

SEC. 179 (as amended by section 53, act No. 2558, Nov. 2, 1914). A determination of the court of industrial appeals may be dealt with by the governor in council in the same way in every respect as if it were a determination of a special board.

Court may revise or alter determinations. SEC. 180. The court of industrial appeals may revise or alter its own determination at any time and from time to time on the application of either the representatives of employers or representatives of employees on the special board.

Powers of president of court. SEC. 181 (as amended by section 54, act No. 2558, Nov. 2, 1914). In addition to the powers otherwise conferred upon the court of industrial appeals, the said court shall have all the powers of the supreme court which last-mentioned powers shall be exercised only by the president; and the court of industrial appeals shall in every case be guided by the real justice of the matter without regard to legal forms and solemnities and shall direct itself by the best evidence it can procure or that is laid before it whether the same be such evidence as the law would require or admit in other cases or not; and if the court considers any further evidence or information which would assist the court could be obtained, the court shall intimate in open court what further evidence or information the court desires.

PART IX.—APPRENTICES AND IMPROVERS.

(1) APPRENTICES AND IMPROVERS.

Special boards to fix number of apprentices and improvers, etc. SECTION 182. (1) When determining any prices or rates of payment every special board shall also determine—

(a) The number or proportionate number of apprentices and improvers who may be employed within any factory or shop or place or in any process trade business or occupation;¹ and

(b) The lowest prices or rates of pay payable to apprentices or improvers when wholly or partly preparing or manufacturing any articles as to which any special board has made or makes a determination or when engaged in any process trade business or occupation as to which any special board has made or makes a determination.²

Board to consider age, sex, and experience. (2) The board when so determining may—

(a) Take into consideration the age, sex, and experience of such apprentices or improvers;

(b) Fix a scale of prices or rates payable to such apprentices or improvers respectively according to their respective age sex and experience; and

(c) Fix a different number or proportionate number of male and female apprentices or improvers.

¹ It will be noted that a board is given power to determine the number or proportionate number of apprentices and improvers who may be employed—

(1) In any factory or shop or place;

(2) In any process, trade, business, or occupation.

Boards have always fixed the number with reference to a factory, shop, or place, or with reference to an individual employer. It is difficult to see how a fixing of the number in a process, trade, business, or occupation could be practically administered, seeing that there would be no means of deciding how many improvers or apprentices any particular employer would be entitled to.

² Any improver may, at the option of his employer, be put to any class of work. It is allowable for a board to fix varying rates for improvers according to the work at which they are employed. The case is different, however, regarding apprentices. An apprentice has to be taught the whole of the trade to which he is apprenticed, and only one scale of payment can be fixed, no matter what his work.

(d) Prescribe the form of apprenticeship indentures to be used.

(3) In fixing the number or proportionate number of apprentices the board shall not fix a less number or proportionate number than one apprentice for every three or fraction of three workers engaged in the particular process trade business or occupation and receiving the minimum wage or earning at piecework not less than the minimum wage fixed for the time by such determination.

(4) Provided that where prior to the 4th day of January, 1911, all the apprentices of any employer have been engaged so that all of their terms of apprenticeship would expire within 18 months of one another, such employer shall be exempt from the operation of this act and from the determination of any special board so far as limitation of apprentices is concerned for a period not exceeding the term of apprenticeship in the particular trade from the said 4th day of January, 1911, so that it shall be lawful during such period as each apprentice of such employer completed his first, second, third, fourth, fifth, or sixth year, for the employer to take another apprentice to supply his place, so that a due and not disproportionate number of skilled workmen shall be secured: *Provided*, That at the expiration of such period of exemption the number of apprentices is not in excess of the number such employer would be entitled to employ in proportion to the number of persons other than apprentices and improvers employed.

SEC. 183. No person who has a greater number of apprentices in his employ than is prescribed in the determination of a special board shall be or be deemed to be guilty of a contravention of this act if he proves—

Act not contravened in certain cases.

(a) That such apprentices employed by him were under indentures of apprenticeship entered into before the 31st day of December, 1910; or

(b) That the date of entering into the indentures of apprenticeship in respect to the last apprentice employed by him and for three months previous thereto he had in his employ such number of persons other than apprentices and improvers as at that date entitled him to the number of apprentices (including such last apprentice) in his employ.

SEC. 184. Where any indentures of apprenticeship are entered into with respect to any trade to which the determination of a special board applies and the wages to be paid to the apprentice are stated in such indentures then notwithstanding anything contained in this act and notwithstanding any subsequent alteration of such determination by such special board the wages to be paid to such apprentice during the currency of such indentures shall be the wages stated in the indentures.

Wages of apprentices.

SEC. 185. (Act 2386.) (Repealed by section 4, act 2447.)¹

(2) APPRENTICES.

SECTION 186. Where any apprentice ² under the age of 21 years has been bound in writing by indentures of apprenticeship for a period of not less than two years, no provision in any determination of a special board shall invalidate cancel or alter such deed of apprenticeship in any way whatever if such deed of apprenticeship was signed by all parties thereto before the notice of motion for the resolution for the appointment of such special board was given in either House of Parliament.

Determinations not to affect certain apprentices.

SEC. 187. (1) No indenture of apprenticeship shall be deemed to be invalid under this act by reason only that such indenture is not under seal.

Absence of seal.

(2) No indenture of apprenticeship shall be entered into after the passing of this act in connection with any trade working under this act except in the form ³ (if any) prescribed by any special board dealing with such trade and approved of by the minister.

¹ Section 185 was a machinery section designed in the consolidating act to provide against the expiry of sections 182, 183, and 184, which were only in force till December 31, 1912. The repeal of section 185 merely has the effect of making sections 182, 183, and 184 permanent.

² Section 5 defines "Apprentice." "Apprentice" means any person under 21 years of age bound by indentures of apprenticeship or any person over 21 years of age who with the sanction of the minister is bound by indentures of apprenticeship.

³ The power of a special board to prescribe the form of indenture will be found in sections 141 and 182.

SEC. 188 (as amended by section 31, act No. 2558 November 2, 1914). (1) Any failure either by an employer or an apprentice to carry out the terms of an indenture of apprenticeship shall be deemed to be a contravention of this section.¹

(2) When the minister is satisfied that there is any such failure either by an employer or apprentice he may direct that proceedings shall be instituted against the employer or apprentice, as the case may be.

(3) A court of petty sessions may for any such contravention—

(a) Impose a penalty not more than £10 (\$48.67) and in addition—

(b) Order the defendant to enter into a recognizance within 14 days in any sum of not more than £50 (\$243.33) with such sureties as the court thinks fit of not more than £50 (\$243.33), each to carry out the terms covenants and conditions of the indentures; and may further order that in default of entering into the recognizance as aforesaid the person or persons in default be imprisoned for a term of not more than one month unless such recognizance be sooner entered into and for a second or subsequent contravention impose a penalty on the defendant of not more than £25 (\$121.66) and in addition may estreat the recognizance (if any).

(c) Or impose on any employer a penalty not more than £25 (\$121.66) if the court is satisfied that the apprentice has not been taught the trade in accordance with the indenture of apprenticeship and that the employer has not given to the court any satisfactory explanation of such failure to teach the apprentice the trade. The whole or any part of such penalty may be applied for the benefit of the apprentice or otherwise as the minister determines.

SEC. 189. The minister may grant permission in writing to any person—

(a) To be bound for less than three years as an apprentice to any trade subject to the determination of a special board;

(b) Who may become over 21 years of age during the term of his apprenticeship to complete the term of his apprenticeship;

(c) Who is over 21 years of age to be bound by indentures of apprenticeship.²

SEC. 190. Except in cases where the minister has given his permission in writing as aforesaid all apprentices unless bound by indentures of apprenticeship which bind the employer to instruct such apprentice for a period of at least three years shall be deemed to be improvers for the purposes of this act.³

(3) PROHIBITION OF CERTAIN PREMIUMS AND GUARANTIES.

SECTION 191. Any person who either directly or indirectly or by any pretense or device requires or permits any person to pay or give or who receives from any person any consideration premium or bonus for engaging or employing any female as an apprentice or improver in preparing or manufacturing articles of clothing or wearing apparel shall be

¹ Where either an employer or an apprentice considers that the other is committing a breach of any of the covenants full information should be sent to the chief inspector of factories with the duplicate copy of the indenture. Inquiry will then be made, and steps taken by the officers of the factories department to enforce observance of the agreement.

² Any person of working age and under 21 can enter into apprenticeship for a term of three years or over in any trade subject to the determination of a special board, but if it is desired that the term of apprenticeship be less than three years, an application should be made to the minister of labor, on the form provided for that purpose, which may be obtained at the office of the chief inspector of factories. That permission will be granted freely in case it is desired to enable a young worker to complete his experience in his trade. If, for instance, he had served three and a half years' apprenticeship to one employer, and desired for any reason (his first indentures having expired or been canceled) to complete five years' experience by serving one and a half years with another employer, he would be granted permission as a matter of course. If, on the other hand, he had no experience, and wished to be bound newly to a trade for less than three years, the minister would require strong reasons for permitting apprenticeship for a term which would be considered too short to enable him to completely master his craft. A form of application under any of the paragraphs of this section may be obtained at the office of the chief inspector of factories.

³ Section 5 defines "improver." "Improver" means any person (other than an apprentice) who does not receive a piecework price or a wage rate fixed by any special board for persons other than apprentices or improvers and who is not over 21 years of age or who being over 21 years of age holds a license from the minister to be paid as an improver.

guilty of an offense and shall be liable on conviction to a penalty not more than £10 (\$48.67); and the person who pays or gives such consideration premium or bonus may recover the same in any court of competent jurisdiction from the person who received the same.

Sec. 192. Any shopkeeper (other than a registered pharmaceutical chemist) who either directly or indirectly or by any pretense or device requires or permits any person to pay or give him or who receives from any person any consideration premium or bonus for engaging or employing any person in connection with the selling of goods or in connection with the business of a hairdresser or barber as an apprentice or improver in a shop shall be guilty of an offense and shall be liable on conviction to a penalty not more than £10 (\$48.67); and the person who pays or gives such consideration premium or bonus may recover the same in any court of competent jurisdiction from the person who received the same.

No premium to be demanded by shopkeeper.

Sec. 193. (1) Except with the consent of the minister in writing, no person shall require or permit any person to pay any sum of money or enter into or make any guaranty or promise requiring or undertaking that such person shall pay any sum of money in the event of the behavior or attendance or obedience of any apprentice improver or employee not being at any time satisfactory to the employer.

Certain guaranties illegal.

(2) Any such guaranty or promise as aforesaid or to the like effect entered into or made after the commencement of this act without the consent of the minister as aforesaid shall be null and void, and any person who without such consent makes or requires such guaranty or promise shall be liable on conviction to a penalty not exceeding 10 pounds.

(3) Any sum which after the commencement of this act is paid in pursuance of such a guaranty or promise as aforesaid or to the like effect made in contravention of this section shall be returned to the person paying same; and the person who has so paid any such sum may if the same is not returned to him on demand recover the same with costs in any court of competent jurisdiction from the person who received the same.

(4) IMPROVERS.

SECTION 194. The minister is hereby authorized to grant to any person over 21 years of age who has satisfied him that such person has not had the full experience prescribed for improvers by the special board a license¹ to work as an improver for the period named in such license at the wage fixed by the board for an improver of any like experience.

License to improvers over 21 years old.

PART X.—MISCELLANEOUS.

(7) OLD, SLOW, AND INFIRM WORKERS.

SECTION 202. (1) If it is proved to the satisfaction of the chief inspector that any person by reason of age slowness or infirmity is unable to obtain employment at the minimum wage fixed by any special board, the chief inspector may in such case grant to such aged or infirm or slow worker a license² for 12 months to work at a less wage (to be named in such license) than the said minimum wage, and such license may be renewed from time to time.

Aged, slow, or infirm workers.

¹ This license should always be produced at the chief inspector's office when application is made for renewal.

² These licenses are only granted in extreme cases to people who, through age, some physical or mental defect, or through some permanent weakness, are unable to do anything like an average day's work. They are not granted to any but persons who have served in and learned the trade for which they desire a license. For example, a laborer would not be granted a license to work as a slow worker in the saddlery trade, nor would an old or infirm saddler be allowed in the bootmaking trade. Applications should be backed up by full information as to the age, slowness, or infirmity of the applicant, and should be made on the form supplied for that purpose at the office of the chief inspector of factories in Melbourne. It should further be remembered that these applications should not properly be granted on the ground of inexperience at the trade. In that case an improver's license (sec. 194, *ante*) is more applicable. Within the metropolitan district the applicant should, if possible, attend at the chief inspector's office to make the application.

(2) The number of persons so licensed as slow workers employed in any factory shall not without the consent of the minister exceed the proportion of one-fifth of the whole number of persons employed in such factory at the minimum wage fixed for adults or at piecework prices: *Provided*, That one licensed slow worker may be employed in any registered factory and any person who without such consent, employs any greater number than such proportion shall be guilty of a contravention of this act.

(3) Any person who, either directly or indirectly or by any pretense or device pays or offers to pay or permits any person to offer or pay any such aged or infirm or slow worker at a lower rate than that fixed by the chief inspector in such license shall be deemed to be guilty of a contravention of this act.

(4) In the event of the chief inspector refusing to grant such license such person may appeal to the minister who may grant such license in the place of such inspector.

PART XII.—OFFENSES, PENALTIES, AND LEGAL PROCEEDINGS.

Two justices to
adjudicate under
this act.

SECTION 219 (as amended by section 36, act No. 2558, November 2, 1914). Where any person is charged with an offense against this act, such charge shall be heard before and all penalties imposed by this act shall be recovered before a court of petty sessions consisting of a police magistrate sitting either with or without justices; and where in this act it is provided that anything may be done by any justices the same shall be done by a police magistrate either with or without any other justice or justices.

Proceedings
against offenders.

SEC. 220 (as amended by section 37, act No. 2558, November 2, 1914).

(1) Every offense against the provisions of this act shall be reported to the minister, who may if he think fit direct proceedings to be taken against the offender and all courts shall take judicial notice of the signature of every person who is or shall be, or shall have been minister, chief inspector of factories and shops or assistant chief inspector of factories and shops to every document required to be signed for the purposes of the factories and shops acts.

(2) All proceedings directed to be taken by the minister against any person for contravening any of the provisions of this act may be taken by any member of the police force or by any inspector.

(3) Where the minister has directed proceedings to be taken against any offender, if the court or justices amend the information warrant or summons for any variance between it and the evidence on the part of the prosecution, such direction of the minister shall be sufficient authority for the continuance of the proceedings against the offender after such amendment thereof by the court or justices.

Defense.

SEC. 221. In proceedings before courts of petty sessions for any contravention of the provisions of this act it shall not be a defense that the occupier of a factory or shop was not in the State at the time an alleged offense against any provision of the said act was committed; and for any such contravention service of a summons by leaving the same with some person apparently of the age of 16 years or upwards at the usual place of business in Victoria of the person named in such summons shall be deemed to be good and sufficient service thereof.

Service of sum-
mons.

General provi-
sions as to pro-
ceedings before
justices.

SEC. 222 (as amended by section 38, act No. 2558, November 2, 1914). The following provisions shall have effect with reference to proceedings before courts of petty sessions for offences under this act:

(a) The information if for any offense in connection with the preparation or manufacture or stamping of furniture or the unlawful paying or receiving any sum of money in connection with the employment of an apprentice or improver, shall be laid within 12 months after the commission of the offense; and if for any other offense shall be laid within two months after the commission thereof;

(g) In proceedings against any person for employing any apprentices or improvers in excess of the number or proportionate number as determined by a special board, the onus of proof that the provisions of this act and of such determination with regard to the number or proportionate number of apprentices or improvers who may be employed have been complied with shall in all cases be on the defendant;

(i) The onus of proof that the person named in a summons as an employee of the defendant in a certain capacity was not employed in the capacity named in such summons shall in all cases be on the defendant.

SEC. 223. The production before any court judge or justices of a copy of the Government Gazette containing the determination of any special board shall be conclusive evidence of the due making and existence of such determination and of the due appointment of such board and of all preliminary steps necessary to the making of such determination.

Evidence of determination.

SEC. 224. When any determination of a special board is amended or repealed, such amendment or repeal shall not directly or indirectly affect any legal proceedings of any kind theretofore commenced under the provisions of this act for any breach of such determination or any right existing at the time of such amendment or repeal under the provisions of this act.

Effect of amendment of determination.

SEC. 225 (as amended by section 39, act No. 2558, November 2, 1914). Where any employer employs any person who does any work for him for which a special board has determined the lowest prices or rates, then such employer shall be liable to pay and shall pay in full in money without any deduction whatever to such person the price or rate so determined, and such person if he has made demand in writing on such employer within two months after such money became due may within 12 months after such money became due take proceedings in any court of competent jurisdiction to recover from the employer the full amount or any balance of such sum so demanded due in accordance with the determination, any smaller payment or any express or implied agreement or contract to the contrary notwithstanding.¹

Power to recover rate determined by special board.

SEC. 226 (as amended by section 40, act No. 2558, November 2, 1914). (1) Where a price or rate of payment for any person or persons or classes of persons has been determined by a special board and is in force, then any person—

Penalty for breach of determination.

(a) Who either directly or indirectly, or under any pretense or device, attempts to employ or employs or authorizes or permits to be employed any person, apprentice, or improver at a lower price or rate of wages or piecework (as the case may be) than the price or rate so determined; or

(b) Who attempts to employ or employs or authorizes or permits to be employed any apprentice or improver in excess of the number or proportionate number so determined; or

(c) Who is guilty of a contravention of any of the provisions of this act with relation to any special board's determination or of a contravention of any of the provisions of Part VII or of section 202 of this act shall be guilty of an offense² against this act, and shall on conviction be liable to a penalty for the first offense of not more than £10 (\$48.67), and for the second offense of not less than £5 (\$24.33) nor more than £25 (\$121.66), and for the third or any subsequent offense of not less than £50 (\$243.33) nor more than £100 (\$486.65).

Provided, That the minister may permit any student of the University of Melbourne or any student taking full day courses of technological study at any workmen's college or any school of mines or any other technical college or technical school in Victoria to enter and work in any factory shop or place during the time he is a student at any such institution for the purpose only of acquiring practical knowledge and skill in the trade carried on in such factory shop or place; notwithstanding that he is not paid the rates provided by any determination in force in the trade concerned.

Permission for certain students to acquire practical knowledge in factories, etc.

¹ Under this section an employee may sue for his wages at any time within 12 months. The time within which the factories department can prosecute for an offense is, however, limited by section 222 to two months, and in some cases to 6 and 12 months. It is very essential, therefore, that any employee who is being underpaid should be given information promptly, so as to allow sufficient time to make the necessary inquiries in connection with the preparation of the case. A case in point was where information was given after the lapse of one month. The employer in the country was really a trustee living in a different country town. Before the inspector had ascertained the facts in the case and the real parties to proceed against, the remaining month had expired, and the employee had to be left to take his own proceedings. Moreover, if claims are allowed to become stale, experience shows that they are more difficult to substantiate. Compare section 232 *post*.

² A saddler was engaged by the employer's foreman to do piecework at a lower rate of pay than that fixed by the saddlery board. The employer, a member of the saddlery board, paid the rates as agreed. *Held*, that there was evidence of every element of the offense created by the section, and that the defendant was rightly convicted. *Billingham v. Oaten* (1911), V. L. R. 44, 17 A. L. R. 36.

Power for court
to order payment
of arrears.

SEC. 232. A court of petty sessions in addition to imposing a penalty for a contravention of any of the provisions of this act or the regulations made thereunder or of a determination of a special board may order the offender to pay to any person in respect of whom he has been convicted of a contravention as aforesaid and who is or has been in his employ such sums for arrears of pay or overtime or tea money (for any period not exceeding 12 months) ¹ as the court may consider to be due to such person and any such sum may be recovered by distress and in default of payment the offender shall be liable to imprisonment for a term not more than three months with or without hard labor.

Discharge for-
bidden.

SEC. 239. Any employer who dismisses from his employment any employee by reason merely of the fact that the employee—

(a) Is a member of a special board; or

(b) Has given information with regard to matters under this act to an inspector; or

(c) Has after having given reasonable notice to his employer of his intention absented himself from work through being engaged in other duties as member of a special board

shall be liable to a penalty not more than £25 (\$121.66) for each employee so dismissed.

PART XIII.—REGULATIONS.²

Regulations.

SECTION 242. The governor in council may by order published in the Government Gazette make regulations—

For prescribing the provisions of this act and regulations thereunder to be posted in factories, and the forms of and particulars to be given in records to be made or kept by occupiers of factories;

For requiring occupiers of factories to furnish all information necessary for preparing lists and rolls of electors none of whom shall be under the age of 18 years for special boards, and for determining the mode of preparing such lists and rolls and the mode of electing members of such boards, the appointment and duties of returning officers and the times and places of meeting of special boards and their mode of procedure;

For imposing penalties not exceeding £5 (\$24.33) on any person failing or neglecting to comply with any regulations made under this act;

For prescribing the rates of pay to be given to the chairman and to members of special boards for attendance at the meetings of such boards; and

Generally for the better carrying out of the provisions of this act.

REGULATIONS UNDER THE FACTORIES AND SHOPS ACTS.³

Whereas by the factories and shops acts it is enacted that the governor in council may, by order published in the Government Gazette, from time to time, make, alter, and repeal regulations for the purposes therein mentioned, and generally for carrying into effect the provisions of the said acts: Now therefore his excellency the governor of Victoria, with the advice of the executive council thereof, doth by this order repeal the regulations made on February 14, 1911, and on August 4, 1911, under the provisions of the factories and shops acts, and doth make the following regulations—that is to say:

¹ A comparison of this section with section 225 ante shows that there are two methods by which an employee may obtain through the court wages due to him. Under this section an employer must be convicted in a prosecution against him taken by the chief inspector of factories to enable the court to order payment of all arrears. Under section 225 the employee himself must issue a civil summons for the recovery of his wages. Compare section 226 ante and footnote thereto.

² The validity of the regulations made or purporting to be made under the provisions of this act can only be tested before the supreme court.

³ The law relating to factories and shops in Victoria, compiled by H. M. Murphy, chief inspector of factories and shops, Melbourne, 1913, pp. 123 et seq.

CHAPTER I.

ELECTING MEMBERS OF SPECIAL BOARDS.

SECTION 137.

1. The chief inspector shall prepare rolls of electors, none of whom shall be under 18 years of age, in the form of Schedule I hereto, and each employer and each employee shall have one vote.

Employers to forward lists.

2. Every employer (whenever by notice in writing required by the chief inspector so to do) shall forward a list of persons employed by him in the form of Schedule II.

Employer's rolls.

3. The employer's rolls for occupations usually carried on in a factory shall be prepared from the register in the factories office, for all other occupations, from the lists forwarded by employers in accordance with section 137 (4) of the factories and shops act 1912.

Employee's rolls.

4. The roll of electors for employees shall in all cases be prepared from lists specially obtained from employers in each case.

Enrolling employees.

5. Every employee, not under 18 years of age, whose name has been omitted, and who will be affected by the board to be appointed, who produces evidence to the satisfaction of the chief inspector that his ordinary occupation when at work is employment in the process, trade, business, or occupation in regard to which the lowest prices or rates of payment are to be determined by any special board shall be enrolled as an elector of representatives of employees on such special board.

Notice.

6. The chief inspector shall notify every elector enrolled for the purposes of a special board that his name has been duly enrolled.

Appeal.

7. If the chief inspector fail, neglect, or refuse to enter any person's name on the elector's roll, such person may appeal to the minister, who may direct the chief inspector to enter such person's name as an elector on the roll, or may dismiss the appeal, and such decision shall be final.

8. No person shall be entitled to be enrolled both as an elector of representatives of employers and as an elector of representatives of employees.

Dates for election.

9. When an election is necessary and the rolls of electors have been prepared as herein prescribed the minister may by notice in the Government Gazette appoint a day on or before which nominations of candidates for election may be received by the returning officer, and a day for the election of candidates should the number of nominations exceed the number of vacancies to be filled.

10. The undersecretary shall be returning officer for the purposes of the election of any special board, and he may, by writing under his hand, appoint a substitute to act for him.

11. The returning officer, the substitute returning officer, and every clerk employed to count the votes at any election shall, before entering on any of his duties, make and sign before some justice the following declaration:

Oath.

I, ———, do solemnly declare that I will faithfully and impartially, according to the best of my skill and judgment, exercise and perform all the powers, authorities, and duties reposed in or required of me by the regulations under the factories and shops acts, as returning officer (or substitute of the returning officer, or clerk employed in counting the votes) for the election of special boards.

And I do further solemnly promise and declare that I will not, at any such election, attempt to ascertain, save in cases in which I am expressly authorized by law so to do, how any person has voted; and that if in the discharge of my said duties at or concerning any such poll, I learn how any person votes, I will not, by word or act, directly or indirectly, divulge or discover the same, save in answer to some question which I am legally bound to answer.

Nominations.

12. Every candidate as a representative of employers on any special board shall be nominated, in writing, by 10 electors, and every candidate as a representative of employees on any special board shall be nominated, in writing, by 25 electors, provided that a nomination by not less than one-fifth of the whole number of employers or of employees (as the case may be) on the electors' roll prepared by the chief inspector of factories shall be sufficient. Every such nomination shall contain the written consent of the candidate to his nomination and shall be delivered or posted to the returning officer so as to reach him before 4 o'clock on the day of nomination.

13. Should the number of persons so nominated for any special board as representatives of employers or as representatives of employees not exceed the number to be so elected, the returning officer shall report to the minister that such persons so nominated to the special board have been duly elected as representatives of employers or as representatives of employees (as the case may be).

Publication of nominations.

14. Should the number of persons nominated either as representatives of employers or as representatives of employees exceed the number to be elected on any special board, the returning officer shall publish the names of persons so nominated in the Government Gazette, and a poll shall be taken on the date fixed by the minister. The poll shall be taken by voting papers only, and no voting paper shall be allowed which is received by the returning officer after 4 o'clock in the afternoon of the day for taking the poll.

Roll.

15. No additional names shall be added to the roll of electors after the returning officer has published in the Government Gazette the names of persons nominated until after that particular election is over.

Voting papers.

16. Every voting paper shall contain the names of each of the candidates for election either as a representative of employers or employees (as the case may be). The chief inspector shall cause a voting paper to be posted at least four days prior to the date of such election to every elector whose name and address are on the roll of electors.

Voting.

17. Each elector shall strike out on the voting paper forwarded to him all the names except those of the candidates for whom such elector desires to vote, and shall forthwith return such voting paper to the returning officer by placing it in a ballot box at the office of the chief inspector of factories, or posting it. No voting paper shall be allowed in which more or fewer names are left uncanceled than the number of persons to be elected.

Counting vote.

18. The returning officer shall, as soon as practicable after the hour fixed for receiving voting papers, count the votes received, and report to the minister the election of those candidates, not exceeding the number to be elected, who have received the greatest number of votes.

Casting vote.

19. In case of two or more candidates receiving an equal number of votes, the returning officer shall have a casting vote.

20. In all cases not herein provided for the rules and usages at parliamentary elections shall be allowed so far as they may be applicable.

MEETINGS OF SPECIAL BOARDS AND PAYMENT OF MEMBERS.

SECTION 242.

Nomination of chairman.

21. Every special board shall meet at the office of the chief inspector of factories for the purpose of nominating a chairman, and thereafter at such other times and places as may be arranged by such special board.

Secretary.

22. The chief inspector may direct some officer to act as secretary to each special board.

Minutes.

23. Entries of all proceedings of any special board shall be kept by the secretary with the names of the members who attended each meeting.

Conduct of meetings.

24. The mode of conducting the business for which any special board is appointed may be fixed by such special board, or may be left to the decision of the chairman.

Determination.

25. Every determination shall be communicated to the minister, in writing, by the chairman of such special board.

26. After the determination of any special board has been communicated to the minister such board shall adjourn sine die, and shall meet again only when convened by the minister of labor or by the chairman of such special board.

Fees.

27. The chairman of a special board for attendance at a meeting may be paid £1 (\$4.87) for each meeting of the board extending over the morning and afternoon of any day, and £1 (\$4.87) for a meeting of the board commenced during the afternoon of any day and continued after 7 p. m. the same day. For a meeting either during only the forenoon or afternoon the chairman may be paid 10s. (\$2.43).

28. Every member of a special board for attendance at a meeting may be paid 10s. (\$2.43) for each meeting of the board extending over the morning and afternoon of any day, and 10s. (\$2.43) for a meeting of not less than four hours of a board commenced during the afternoon of any day and continued after 7 p. m. the same day. For a meeting either during only the forenoon or afternoon of any day each member may be paid 5s. (\$1.22).

Expenses.

29. Any representative of employers or employees residing not less than 40 miles from Melbourne shall be entitled to be paid train fare only from such place of residence and a sum of 10s. (\$2.43) per day for traveling expenses.

CHAPTER VII.

FORMS TO BE KEPT IN A FACTORY OR SHOP OR FORWARDED TO THE CHIEF INSPECTOR.

Record of work done inside a factory.

2. The true record of the names, work, and wages of all persons employed in a factory, and the ages of all persons so employed under 21 years of age, required to be kept by section 22, shall be in the form and contain the particulars prescribed by Schedule VII hereto, and such record shall be forwarded to the chief inspector within 7 days after October 31 in each year.

Record of employees in shops, etc.

3. The true record of the names, work, and wages of the persons employed, and the name and age of every person employed under 21 years of age, required to be kept by sections 126 and 197, shall be in the form and contain the particulars prescribed by Schedule VIII, and such record shall be forwarded to the chief inspector within 7 days after February 1 in each year.

Record of work done outside a factory.

4. The record to be kept by the occupier of every factory, and every employer of a factory within the meaning of section 23, of the work done outside a factory, and the name and address of the person by whom the same is done, and the prices paid in each instance for the work, shall be in the form of and contain the particulars specified in Schedule IX hereto for each and every week of the year.

Record of fines imposed.

SECTION 22.

6. The record of all fines levied upon his employees by the occupier of any factory shall be kept in the form of Schedule XI, and a copy of such schedule shall be forwarded to the chief inspector within 7 days of the 1st February in each year.

CHAPTER X.

MODE OF APPEALING TO THE COURT OF INDUSTRIAL APPEALS.

1. Every appeal under the provisions of section 176 of the factories and shops act 1912 against the determination of a special board shall be instituted by the person entitled to appeal and desiring so to do, forwarding to the minister of labor a notice, in writing, containing particulars of such desire.

2. The notice of appeal shall state the character in which the appellant claims to appear, and when the appeal is by a single employer or group of employers employing not less than 25 per cent of the total number of workers shall set out particulars of the numbers of workers employed by each appellant. The notice shall be written in legible characters, and shall clearly and distinctly set forth or otherwise identify separately the item or items in the determination against which appellant is appealing, and his grounds of objection to such item or items.

3. The notice of appeal shall be signed in a legible manner by each appellant, and the full address and occupation of each appellant shall be given opposite each signature.

4. Such notice shall name some address for service, not more than 5 miles from the general post office, where notices, orders, summonses, documents, and written communications may be left for the appellant or appellants, and all notices, orders, summonses, documents, and written communications served or left at such address shall constitute effective service on the appellant or appellants, if there be more than one.

5. Two copies of the notice of appeal shall be forwarded with the original.

6. The chief inspector of factories, and the registrar of the court of industrial appeals may allow any employer or employee in the trade affected by a determination against which an appeal has been lodged to make a copy of the notice of appeal for the purpose of entering an appearance against such appeal.

7. Any employer or employee in the trade affected by the determination which is the subject of an appeal who desires to be heard by the court against such appeal, shall, 7 days at least before the hearing, notify the registrar of the court of industrial appeals of such desire, and shall give his full name, his occupation, and address in such notification.

8. The chief inspector of factories shall attach to such notice of appeal a list containing the names and addresses of the members of the special board the determination of which is the subject of appeal, and also, when necessary, a certificate giving the number of persons employed in the trade affected by such employer or group of employers, and also the total number of persons employed in such trade as indicated in Appendix A of the chief inspector's last annual report issued prior to such appeal, or in the case of appeal by the workers in any trade, a certificate giving the number of persons employed in such trade as indicated in Appendix A of the chief inspector's last annual report.

9. Noncompliance with these regulations shall not prevent the hearing of an appeal or of opposition thereto unless the court so orders.

NEW SOUTH WALES.

INDUSTRIAL ARBITRATION ACT, 1912, NO. 17.

An Act to provide for the regulation of the conditions of industries in certain particulars by means of industrial conciliation and arbitration, and for the repression of lockouts and strikes; to establish and define the powers, jurisdiction, and procedure of an industrial court and certain subsidiary tribunals; to preserve certain awards and industrial agreements; to repeal the industrial disputes act, 1908, the industrial disputes amendment act, 1908, the industrial disputes (amendment) act, 1909, and the industrial disputes (amendment) act, 1910; to amend the clerical workers act, 1910, and certain other acts; and for purposes consequent thereon or incidental thereto.

PART I.—PRELIMINARY.

SECTION 1. This act may be cited as the "Industrial arbitration act, 1912." Short title.

SEC. 2. This act shall commence on and from a date to be proclaimed by the governor in the Gazette: Commencement.

Provided, That the provisions of this act relating to the registration of industrial unions and the appointment of boards, and all provisions necessary for such registration and for making such appointments, shall come into force on the passing of this act.

SEC. 4. (1) The industrial disputes act, 1908, the industrial disputes amendment act, 1908, the industrial disputes (amendment) act, 1909, and the industrial disputes (amendment) act, 1910, are repealed. Repeal and savings.

(2) All awards, orders, and industrial agreements made under authority of the acts hereby repealed and in force at the commencement of this act shall, until rescinded under this act, continue in force for the respective periods fixed by such awards, orders, or industrial agreements, and shall be deemed to have been made under this act. In construing any such award, order, or industrial agreement references to the registrar shall be read as references to the registrar appointed under this act, and for the purpose of any appeal from the registrar references to the industrial court shall be read as references to the court of industrial arbitration constituted by this act. Awards.

Summonses issued.

(3) All summonses issued at such commencement under sections 41, 43, or 55 of the industrial disputes act, 1908, and returnable before the industrial court, shall continue in force, but shall be returnable before, and shall be heard and determined by the court of industrial arbitration constituted by this act, or by the registrar or an industrial magistrate on being referred to him by the court. For the purpose of carrying out the above provisions, the enactments of the industrial disputes act, 1908, shall continue in force and shall, *mutatis mutandis*, apply to the hearing and determination of any such matter by the court of industrial arbitration constituted by this act, and to the enforcement of any order of such court.

All documents relating to any such matters or proceedings, and filed or deposited with the industrial court shall be handed over to the court of industrial arbitration, and filed with such court.

The registrar.

(4) The registrar appointed under any act hereby repealed, and holding office at the commencement of this act, shall be deemed to have been appointed hereunder.

Regulations.

(5) All regulations made under the acts hereby repealed, and in force at the commencement of this act, shall, *mutatis mutandis*, apply as if made under this act.

Definitions.

Definitions.

SEC. 5. In this act, unless the context otherwise indicates "apprentice" means an employee under 21 years of age who is serving a period of training under an indenture or other written contract for the purpose of rendering him fit to be a qualified worker in an industry.

"Award" means award under this act, and includes a variation of such award.

"Board" means industrial board constituted under this act.

"Boarding house" shall include a lodging house, and shall mean a house in which five or more paying boarders or lodgers, not being members of the proprietor's family, are accommodated.

"Calling" means craft or other occupation.

"Court" means court of industrial arbitration established by this act.

"Employee" means person employed in any industry, whether on wages or piecework rates or as member of a *butty gang*, but shall not include a member of a family in the employment of a parent, and the fact that a person is working under a contract for labor only, or substantially for labor only, or as lessee of any tools or other implements of production, or any vehicle used in the delivery of goods, shall not in itself prevent such person being held to be an employee.

"Employer" means person, firm, company, or corporation employing persons working in any industry, whether on behalf of himself or itself or any other person or on behalf of the government of the State, and includes the chief commissioner for railways and tramways, the Sydney Harbor trust commissioners, the metropolitan board of water supply and sewerage, the Hunter district water supply and sewerage board, and any council of a municipality or shire, and includes for the purpose of constituting a board, a director, manager, or superintendent of an employer as defined as aforesaid.

"Improver" means an employee under 21 years of age who is serving for the purpose of rendering him fit to be a qualified worker in an industry or special section of an industry.

"Industrial agreement" means industrial agreement made and filed under any act hereby repealed, or under this act.¹

"Industrial court" means industrial court constituted by the repealed acts.

"Industrial magistrate" means industrial magistrate appointed under this act.

¹ Section 13 of the acts of 1901 reads as follows: Any industrial union may make an agreement in writing relating to any industrial matter (a) with another industrial union, or (b) with an employer, which, if it is made for a specified term not exceeding three years from the making of the agreement, and if a copy thereof is filed with the registrar, shall be or become an industrial agreement within the meaning of this act.

"Industrial union" means industrial union registered as an industrial union under this act.

"Industrial matters" means matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employees in any industry, not involving questions which are or may be the subject of proceedings for an indictable offense; and, without limiting the ordinary meaning of the above definition, includes all or any matters relating to—

(a) The wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the piecework, contract, or other prices paid or to be paid therein in respect of such employment.

(b) The hours of employment, sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment.

(c) The employment of children or young persons, or of any persons or class of persons in any industry, or the right to dismiss or to refuse to employ or reinstate in employment any particular persons or class of persons therein; but not so as to give preference of employment to members of industrial unions, except in accordance with the provisions of section 24, subsection 1, paragraph (g);

(d) Any established custom or usage of any industry, either general or in any particular locality;

(e) The interpretation of an industrial agreement or award;

"Industry" means occupation or calling in which persons of either sex are employed for hire or reward.

"Judge" or "the judge" means the judge of the court of industrial arbitration, and includes an additional judge of the court.

"Justice" means justice of the peace, and includes a magistrate.

"Lockout" (without limiting its ordinary meaning) includes a closing of a place of employment, or a suspension of work, or a refusal by an employer to continue to employ any number of his employees with a view to compel his employees, or to aid another employer in compelling his employees, to accept terms of employment.

"Magistrate" means stipendiary or police magistrate.

"Members of a board" and "members of a conciliation committee" include the chairman of the board and of the committee respectively.

"Metropolitan district court" means district court of the metropolitan district, holden at Sydney.

"Minister" means minister of the Crown administering this act.

"Necessary commodity" includes—

(a) Coal;

(b) Gas for lighting, cooking, or industrial purposes;

(c) Water for domestic purposes; and

(d) Any article of food, the deprivation of which may tend to endanger human life or cause serious bodily injury.

"Prescribed" means prescribed by this act or by regulations made thereunder.

"Registrar" means industrial registrar appointed under this act.

"Repealed acts" means the acts repealed by this act.

"Schedule" means schedule to this act, and any amendment of or addition to such schedule made in pursuance of this act.

"Strike" (without limiting its ordinary meaning) includes the cessation of work by any number of employees acting in combination, or a concerted refusal or a refusal under a common understanding by any number of employees to continue to work for an employer with a view to compel their employer, or to aid other employees in compelling their employer, to accept terms of employment, or with a view to enforce compliance with demands made by them or other employees on employers.

"Trade-union" means trade-union registered under the trade-union act, 1881, and includes a branch so registered.

Industrial unions.

SEC. 6. The registrar may, on application made as hereinafter provided, register under this act as an industrial union of employers any person or association of persons, or any incorporated company, or association of incorporated companies, who or which has in the aggregate

Registration of
industrial union
of employers.

throughout the six months next preceding the date of the application for registration employed on an average, taken per month, not less than 50 employees.

Such application shall be made as prescribed, and, if made by an association or company, shall be signed by a majority in number of the governing body thereof.

Registration under repealed acts and act of 1901.

SEC. 7. Any person or body whose registration under the act No. 59, 1901, as an industrial union is at the commencement of this act in force, and any trade-union registered under section 9 of the industrial disputes act, 1908, whose registration under that act is at the said commencement in force, shall, unless and until such registration is canceled, be deemed to be an industrial union.

Registration of industrial union of employees.

SEC. 8. (1) The registrar may, on application made as hereinafter provided, register under this act any trade-union of employees. On such registration the trade-union shall be an industrial union until such registration is duly canceled.

(2) Such application shall be made in writing as prescribed by the committee of management of the trade-union, and shall be signed by a majority in number of the members of such committee. Notice of any such application shall be published as prescribed.

The registrar may require such proof as he thinks necessary of the authority of the said members to make the said application.

(3) Any such application may be refused by the registrar if he is of opinion that the organization applying is not a bona fide trade-union, or if registered under this act would not be a bona fide industrial union, or if it appears that another trade-union to which the members of the applicants' union might conveniently belong has already been registered as an industrial union.

(4) The registrar shall fix a day for considering any objections on the above ground to the granting of the application, and shall notify the same as prescribed.

(5) No branch shall be registered, unless it is a bona fide branch of sufficient importance to be registered separately.

(6) Any decision of the registrar under this section in respect of an objection taken as aforesaid, or on refusal of registration, shall be subject to appeal to the court as prescribed.

(7) The court may, for any reasons which appear to it to be good, cancel the registration of any industrial union, provided that, save where otherwise mentioned in this act, such cancellation shall not relieve the industrial union or any member thereof from the obligation of any award or industrial agreement, or order of the court or a board, or from any penalty or liability incurred prior to such cancellation.

Cancellation of registration at request of union.

SEC. 9. (1) The court may cancel the registration of an industrial union if proof is given to its satisfaction that a majority in number of the members of the union, by secret ballot taken as prescribed, require such cancellation:

(2) *Provided*, That such power of cancellation shall not be exercised while any award or any industrial agreement relating to members of any such union whether made under the repealed acts or this act is in force.

The court may cancel registration.

SEC. 10. The court may, if satisfied that an industrial union is instigating to or aiding any other union or any of its members in a lockout or strike for which such other union or any of its members are liable to a penalty under this act, in its discretion cancel such registration and cancel any award or industrial agreement relating to such industrial union or the members thereof with the consent of all other parties bound by such award or industrial agreement.

Industrial agreement.

Power to make industrial agreements.

SEC. 11. Any industrial union of employees may make an agreement in writing with an employer or any other industrial union relating to any industrial matter.

Any such agreement if made for a term specified therein not exceeding five years from the making thereof, and if filed at the office of the registrar, shall be an industrial agreement within the meaning of this act, and shall be binding on the parties, and on all persons for

the time being members of such unions, but may be rescinded or varied in writing by the parties. Any variation of any such agreement, if filed as aforesaid, shall be binding as part of the agreement.

Any such industrial agreement may be enforced under this act.

SEC. 12. If after the commencement of this act any trade-union of employees, not being an industrial union, enters into and executes in the manner prescribed by the rules of such union any agreement relating to any industrial matters with an employer or an industrial union of employers, either party to such agreement may file the same in the office of the registrar. Any such agreement, if made for a term specified therein not exceeding five years from the making thereof, shall, in so far as it relates to industrial matters, be binding on the parties, and on all persons for the time being members of such unions, and shall be enforceable in the same manner as an industrial agreement made under this act. Such agreements may be rescinded or varied by the parties, and any such variation if filed as aforesaid shall be binding as part of the agreement.

PART II.—THE INDUSTRIAL COURT AND THE BOARDS.

Constitution of the court.

SECTION 13. (1) There is hereby constituted a court to be called the court of industrial arbitration. It shall be a superior court and a court of record, and shall have a seal, which shall be judicially noticed.

The court shall have the jurisdiction and powers conferred on it by this act, and also the jurisdiction and powers conferred in the industrial court by the clerical workers act, 1910. Subject to the said act, with regard to jurisdiction, the provisions of this act shall apply so far as they are applicable for the purpose of making and enforcing awards under the said act.

(2) The industrial court established by the repealed acts is dissolved, and the present judge of that court shall be the judge of the court of industrial arbitration, and shall hold such office subject to the provisions of subsections 6 and 7 of this section.

Whenever the office of the judge becomes vacant, the governor may appoint a supreme court judge or a district court judge, or a barrister at law of five years' standing, to be the judge.

(3) The governor may appoint a supreme court judge or a district court judge, or a barrister at law of five years' standing, to be judge to act as an additional judge of the court. Such additional judge shall have the same rights, powers, jurisdiction, and privileges as the judge of the court.

(4) The governor may appoint a supreme court judge or a district court judge, or a barrister at law of five years' standing, to be deputy judge to act temporarily in the absence of the judge of the court. Such deputy judge shall, while exercising the jurisdiction conferred on him, have the same salary and all the rights, powers, jurisdiction, and privileges of the judge of the court.

(5) The court shall be constituted by the judge or additional or deputy judge of the court sitting alone, or, in the cases hereinafter in this act provided, with assessors. Should both judge and additional judge be sitting at the same time, each shall constitute the court under this act.

(6) The present or any future or additional judge of the court shall be liable to be removed from office in the same manner and upon such grounds only as a supreme court judge is by law liable to be removed from office.

(7) Where a supreme court judge holds the office of judge of the court, his annual salary as supreme court judge shall continue. Where a district court judge holds such office his annual salary shall be £1,000 (\$4,866.50) in addition to his salary as district court judge. Where a barrister at law is appointed to such office his annual salary shall be the same as that prescribed for a district court judge holding such office.

SEC. 14. The court, in addition to the jurisdiction and powers conferred on it by this act, shall have the powers and may exercise the

Industrial agreements filed in office of registrar.

Constitution of the court.

The judge of the court.

Additional judge.

Deputy judge.

Judge to constitute the court.

Tenure of office of judge.

Salary.

Powers of the court.

jurisdiction hereby conferred on industrial boards and on the chairmen thereof and on the chairmen of conciliation committees, and on the industrial registrar and an industrial magistrate.

Constitution of the boards.

Dissolution of boards under repealed acts.

SEC. 15. All the boards appointed under the repealed acts are at the commencement of this act dissolved, except where at such commencement any part-heard matter is before any such board, in which case such board may continue to act and deal with and determine such matter in the same manner as if this act had not passed. On such matter being determined, the board shall be dissolved on proclamation to that effect, made by the governor in the Gazette.

Boards for industries in Schedule I.

SEC. 16. (1) Industrial boards shall, on the recommendation of the court, be constituted by the minister under the board designations mentioned in the first column of Schedule I, and under such further or other board designations as the governor may from time to time proclaim, for any one or more of the industries or callings mentioned in the second column of such schedule, and from time to time added to such second column by the governor on resolution passed by both houses of Parliament, and for any such transposition, division, combination, rearrangement, or regrouping of such industries or callings as the minister, on the recommendation of the court, may direct.

Appointment of chairman.

(2) The minister shall appoint a chairman who shall be recommended by the court for all the boards which may be constituted under each of the board designations mentioned in the first column of Schedule I. Such chairman shall preside over and be a member of all such boards.

Appointment of other members.

(3) The minister shall appoint the other members of such boards who shall be recommended by the court.

Board constituted.

(4) On the chairman and members being appointed a board shall be deemed to be constituted.

Members.

(5) Each such board shall, besides its chairman, consist of two or four other members, as may be recommended by the court. One-half in number of such other members shall be employers, and the other half employees, each of whom has been or is actually and bona fide engaged in one of the industries or callings so specified: *Provided*, That where the employers or the employees in the industries or callings consist largely of females, members may be appointed who are not engaged in the industries or callings: *Provided also*, That where, in the opinion of the court, no suitable employer or no suitable employee in the industry can be found who is willing to act on the board on behalf of the employers or employees, as the case may be, such court may recommend any person whom it considers to be acquainted with the working of the industry to represent the employers or employees on the board, and the minister shall appoint such person.

Demarcation of callings.

(6) Where it appears to the court that a question has arisen as to the right of employees in specified callings to do certain work in an industry to the exclusion of the employees in other callings, the court may, on application made by any such employees, constitute a special board to determine such question.

Such board shall consist of a chairman and such number of other members as the court fixes, but so that—

(a) One-half in number of such other members shall be employers and the other half employees, each of whom has been or is actually and bona fide engaged in one of the said callings;

(b) Such of the callings as the court considers to be directly interested in the question shall be represented on the board by an employer or employers, and by an employee or an equal number of employees.

The chairman and other members of any such board shall be appointed by the court.

The determination shall have effect as an award of a board.

Boards for industries in Schedule II.

SEC. 17. (1) The minister shall, on the recommendation of the court, constitute industrial boards for the industries and callings mentioned in Schedule II as amended or added to in pursuance of this act.

Appointment.

(2) The minister shall—

(a) Appoint chairmen who shall preside at and be members of such boards;

(b) Appoint the other members of such boards. The persons so appointed shall be recommended by the court.

(3) Each such board shall have jurisdiction as to matters relating to such of the said industries or callings or sections thereof as may be specified by the court in its recommendation to the minister.

Jurisdiction.

(4) Each such board shall, besides the chairman, consist of two or four other members, as may be recommended by the court, one-half in number of whom shall be employers and the other half employees, each of whom has been or is actually and bona fide engaged in one of the industries or callings so specified:

Members.

Provided, That where the employers or the employees in the industries or callings consist largely of females, members may be appointed who are not engaged in the industries or callings:

Provided also, That where, in the opinion of the court, no suitable employer or no suitable employee in the industry can be found who is willing to act on the board on behalf of the employers or employees, as the case may be, such court may appoint any person whom it considers to be acquainted with the working of the industry to represent the employers or employees on the board.

(5) The provisions of this act relating to boards shall apply to any board constituted under this section.

Application of act to such boards.

(6) The governor may on resolution passed by both houses of Parliament amend Schedule II or add thereto other industries. Any such amendment or addition shall be published in the Gazette.

Amendment of Schedule II.

SEC. 18. If any member of a board, without reasonable excuse, neglects on two successive occasions to attend meetings of the board duly convened, or to vote when present at any such meeting on any question duly submitted to the board, he shall be liable to a penalty not exceeding £5 (\$24.33), and the governor may declare his office vacant, and thereupon such member shall cease to hold office.

Failure of member to attend.

SEC. 19. Each member of a board shall, upon his appointment, take an oath not to disclose any matter or evidence before the board or the court relating to trade secrets; the profits or losses or the receipts and outgoings of any employer; the books of an employer or witness produced before the board or the court; or the financial position of any employer or of any witness; and if he violates his oath, he shall be liable to a penalty not exceeding £500 (\$2,433.26), and, on conviction of such offense, he shall cease to hold office.

Oath to be taken by members.

SEC. 20. (1) The minister, on the recommendation of the court, may at any time dissolve a board; he may also on such recommendation remove any member of a board from his office on the ground that such member is of unsound mind, or in prison, or has abandoned his residence in this State, or is not properly discharging his duties as a member of such board.

Dissolution of board and removal of member.

(2) Subject to the above provision, the members of a board shall hold office until the expiration of three years from the date of their appointment, and then shall cease to hold office: *Provided*, That a member may resign his office.

Period of office.

(3) A new board may be appointed under this act to take the place of a board that has been dissolved, or the members of which have resigned, or have ceased to hold office.

New board.

Members ceasing to hold office on a board shall be eligible for appointment to the new board.

The provisions of this act relating to the constitution and manner of appointment of boards shall apply to the appointment of such new board.

SEC. 21. (1) Where, from any cause, a member of a board ceases to hold office, the minister may appoint a duly qualified person, who shall be recommended by the court, to his office for the residue of the period for which such member was appointed.

Appointment to vacancies.

(2) Where a person is appointed to any vacancy on a board, the board as newly constituted may, if no member of the board objects, continue the hearing of and may determine any part-heard case.

SEC. 22. Every appointment of a member of a board shall be published in the Gazette, and a copy of a Gazette containing a notice of such appointment purporting to have been published in pursuance of this act shall be conclusive evidence that the person named in such

Appointments to be gazetted.

notice was legally appointed to the office named, and had power and jurisdiction to act in such office, and such appointment shall not be challenged for any cause.

Fees. SEC. 23. The members of a board shall be paid such fees as may be fixed by the governor.

PART III.—JURISDICTION OF BOARDS AND OF THE COURT.

Power of board to make recommendation.

SECTION 24. (1) A board, on any reference or application to it may, with respect to the industries or callings for which it has been constituted, make an award—

(a) Fixing the lowest prices for work done by employees and the lowest rates of wages payable to employees, other than aged, infirm, or slow workers;

(b) Fixing the number of hours and the times to be worked in order to entitle employees to the wages so fixed;

(c) Fixing the lowest rates for overtime and holidays and other special work, including allowances as compensation for overtime, holidays, or other special work;

(d) Fixing the number or proportionate number of apprentices and improvers and the lowest prices and rates payable to them;

(e) Determining any industrial matter;

(f) Rescinding or varying any award made in respect of any of the industries or callings for which it has been constituted;

(g) Declaring that preference of employment shall be given to members of any industrial union of employees over other persons offering their labor at the same time, other things being equal: *Provided*, That where any declaration giving such preference of employment has been made in favor of an industrial union of employees, such declaration shall be canceled by the court of arbitration if at any time such union, or any substantial number of its members, takes part in a strike or instigates or aids any other persons in a strike; and if any lesser number takes part in a strike, or instigates or aids any other persons in a strike, such court may suspend such declaration for such period as to it may seem just.

Charitable institutions.

(2) Where an institution carried on wholly or partly for charitable purposes provides for the food, clothing, lodging, or maintenance of any of its employees or any of its inmates who are deemed to be employees, the board in its award as to the wages of such employees or inmates, shall make due allowance therefor. The board may exempt such institution from all or any terms of the award where the food, clothing, lodging, and maintenance provided by the institution, together with the money if any, paid by the institution to such employees or inmates as wages, are at least equal in value to the value of the labor of such employees or inmates.

Award of board.

SEC. 25. (1) The award of a board shall be signed by the chairman and forwarded to the registrar who shall forthwith publish the same in the Gazette and notify the parties. On such publication every award shall take effect and be binding on all persons engaged in the industries or callings and within the locality and for the period not exceeding three years specified therein.

Applications to court to vary recommendations.

(2) Within 30 days of such publication any of the parties to the proceedings before the board, with the consent of the court, and any other person, with the like consent, may in manner prescribed make application to the court for variation or amendment of such award, or for rehearing in respect to any matter in or omission from the award.

(3) If the board refuses to make any award, any of the said parties may, within 14 days after such refusal, make application to the court to make an award as to any matter included in a claim or reference made to the board.

Determination by court.

(4) On any such application the court may confirm, or vary, or rescind the award thus appealed from, or make a new award, and may make such order as to the costs of the appeal as it thinks just.

At such hearing the members of the board other than the chairman shall, if any person making the application so desires, sit with the court as assessors.

(5) The pendency of an appeal shall not suspend the operation of an award appealed from.

Sec. 26. Employees employed by the Government of New South Wales or by any of its departments, including the chief commissioner for railways and tramways, the Sydney Harbor trust, the metropolitan board of water supply and sewerage, and the Hunter district board of water supply and sewerage shall be paid rates and prices not less than those paid to other employees not employed by the Government or its departments doing the same class of work under similar circumstances. But the fact that employment is permanent, or that additional privileges are allowed in the service of the Government or its departments, shall not of itself be regarded as a circumstance of dissimilarity. The court or an industrial board shall not fix rates and prices for such first-mentioned employees lower than those fixed for such other employees.

Wages of Government employees.

Sec. 27. (1) Any aged, infirm, or slow worker who may deem himself unable to earn the minimum wage prescribed by any award, may apply to the registrar for a permit in writing to work for less than the wage so prescribed.

Permits for aged, infirm, or slow workers.

(2) The registrar shall be the tribunal to determine whether and on what conditions such permit shall be granted, and shall have power to revoke or cancel any permit.

(3) The registrar shall forthwith notify the secretary of the industrial union of the trade or calling in which such applicant desires to be employed, of the grant of such permit and of the conditions contained therein.

(4) The said union may at any time after such notice apply to the registrar in the manner prescribed for the cancellation of such permit.

(5) An appeal against any such determination shall not lie from the registrar to the court except on the ground that the trade or calling concerned is one in which no such permit should be granted.

Sec. 28. Unless otherwise expressly provided in this act, an award, whether made under this act or the repealed acts, may be rescinded, added to, or varied only on application or reference to a board in pursuance of this act.

Variation of award.

But the court may, at any time, on its own initiative or on application made to it, prohibit any proceeding of a board or vary or rescind any award made under this act or the repealed acts.

Sec. 29. Subject to the right of appeal under this act, and to such conditions and exemptions as the board may, and is, hereby authorized to determine and direct, an award shall be binding on all persons engaged in the industries or callings and within the locality, and for the period not greater than three years specified therein.

Award to be binding.

Sec. 30. The Crown may, where, in the opinion of the minister, the public interests are or would be likely to be affected, intervene in any proceedings under this part before a board or the court, or appeal from an award of a board and make such representations as it thinks necessary in order to safeguard the public interests.

Intervention by Crown.

PART IV.—PROCEDURE OF BOARDS.

SECTION 31. (1) Proceedings before a board shall be commenced by—

Commencement of proceedings.

(a) Reference to the board by the court or the minister; or

(b) Application to the board by employers or employees in the industries or callings for which the board has been constituted.

(2) Any such application shall be in the form, and shall contain the particulars prescribed, and shall be signed by—

(a) An employer or employers of not less than twenty employees in any such industry or calling; or

(b) An industrial union whose members are employers or whose members are employees in any such industry or calling.

Convening of meetings.

(3) All meetings of a board shall be convened by the chairman by notice to each member served as prescribed.

Inquiry by board.

Sec. 32. In every case where an application or reference to a board is made, it shall be the duty of the chairman to endeavor to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the board shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof.

In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.

Power of entry and inspection.

SEC. 33. A board, or any two or more members thereof authorized by the board under the hand of its chairman, may enter and inspect any premises used in any industry to which a reference or application to the board relates, and any work being carried on there.

If any person hinders or obstructs a board or any member thereof in the exercise of the powers conferred by this section, or hinders or obstructs the judge in the exercise of like powers, he shall be liable to a penalty not exceeding £10 (\$48.67).

Conduct of proceedings of board, and its powers as to witnesses.

SEC. 34. A board may—

- (a) Conduct its proceedings in public or private as it may think fit;
- (b) Adjourn the proceedings to any time or place;
- (c) Exercise in respect of witnesses and documents and persons summoned or giving evidence before it, or on affidavit, the same powers as are by section 136 of the parliamentary electorates and elections act, 1902, conferred on a committee of elections and qualifications, and the provisions of the said section shall apply in respect of the proceedings of the board: *Provided*, That unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the members of the board alone, and no person shall inspect such books except the chairman or an accountant appointed by the board, who may report to the board whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant shall, before acting under this paragraph, take the oath prescribed in respect of members of a board by section 19 of this act;

(d) Admit and call for such evidence as in good conscience it thinks to be the best available, whether strictly legal evidence or not.

Evidence to be on oath.

SEC. 35. (1) The chairman shall require any person, including a member of the board, to give his evidence on oath, and may on behalf of the board issue any summons requiring the attendance of witnesses; if any person so summoned does not attend he shall be liable to a penalty not exceeding £50 (\$243.33).

Admissibility of evidence.

(2) Any question as to the admissibility of evidence shall be decided by the chairman alone, and his decision shall be final.

Questions of jurisdiction.

(3) Where during the hearing of any matter before a board its jurisdiction is disputed, the chairman may decide the question of jurisdiction subject to appeal to the court, or may submit it to the court; in which case the court shall decide such question and remit its decision to the board.

Proceedings at meetings.

SEC. 36. At any meeting of a board, unless otherwise provided in this act—

- (a) The chairman shall preside;
- (b) Each member except the chairman shall have one vote; and where the votes for and against any matter are equal, the chairman shall decide the question, but shall not give such decision unless satisfied that the question can not otherwise be determined.
- (c) Any member of the board may call, examine, or cross-examine witnesses.

Appearance of parties by advocate or agent.

SEC. 37. In any proceedings before the court or a board, no person, except with the consent of the court or the chairman, shall appear as an advocate or agent who is not or has not been actually and bona fide engaged in one of the industries or callings in respect of which such proceedings are taken.

PART V.—CONCILIATION COMMITTEES.

Committees for colliery districts.

SECTION 38. The minister may, as prescribed, notify districts as follows: A northern colliery district; a southern colliery district; a western colliery district. Notification of districts.

He may also notify, as he may think fit, any other district in which more than 500 employees work in or about coal or metalliferous mines, and may cancel or amend any notification made under this section.

SEC. 39. (1) The minister may, in the manner prescribed, constitute for each such district a conciliation committee consisting of two or four members, as the minister may determine, and to be appointed by him, one-half in number of whom shall be nominated by the employers and the other half nominated by the employees, and a chairman. Conciliation committees.

The chairman shall be chosen by the unanimous agreement of the other members, but if no such agreement is arrived at, or if the chairman so chosen is unable or refuses to act, he shall be appointed by the governor: *Provided*, That the minister may, if he thinks fit, appoint the judge to be chairman of any such committee.

(2) No such committee shall be appointed unless the employees in the industry concerned are registered as an industrial union under this act.

(3) Such of the provisions of sections 19 to 23 as relate to members of boards shall, so far as applicable, and subject to the provisions of this section, apply to any member of a committee established under this section except the judge.

SEC. 40. (1) Any such committee shall meet on being summoned by its chairman, as prescribed, or at the request of the minister, and shall inquire into any industrial matter in connection with coal mining or metalliferous mining, as the case may be, within its district. Inquiry by committee.

(2) The chairman shall preside at all meetings of a committee, and shall endeavor to induce the other members to come to an agreement, but shall not take any part in the decisions of the committee.

SEC. 41. If such agreement is come to, it shall be reduced to writing and signed by the other members on behalf of the employers and the industrial unions concerned. Such agreement on being certified by the chairman as prescribed shall be filed and shall have effect as an industrial agreement between such employers and unions. Agreement to have effect as industrial agreement.

SEC. 42. The minister may also, as prescribed, constitute a conciliation committee for any occupation or calling in which more than 500 persons are employed other than coal or metalliferous mining. Such committee shall be appointed in the manner and shall have the powers mentioned in sections 39, 40, and 41 of this act. Constitution of conciliation committee.

Special commissioner.

SEC. 43. (1) There shall be a special commissioner, who shall be appointed in that behalf by the minister. Special commissioner.

(2) Such commissioner may require the attendance of any persons to meet the conference whenever any question has arisen that in his opinion might lead to a lockout or strike, and either no board has been constituted which would have jurisdiction in the matter or he is of opinion that a preliminary or temporary agreement should be made before the matter is submitted to a board. At such conference the commissioner shall preside and endeavor to induce the parties to come to an agreement. Conference.

(3) If any person so required does not attend in conference as aforesaid he shall be liable to a penalty not exceeding £50 (\$243.33). Penalty.

PART VI.—LOCKOUTS AND STRIKES.

Lockouts.

SECTION 44. If any person, including an industrial union of employers, does any act or thing in the nature of a lockout, or takes part in a lockout, or instigates to or aids in any of the above-mentioned acts, the court may order him to pay a penalty not exceeding £1,000 (\$4,866.50). Penalty for lockout.

Strikes.

Penalty for strike by any person.

SEC. 45. (1) If any person does any act or thing in the nature of a strike, or takes part in a strike, or instigates to or aids in any of the above-mentioned acts, the court may order him to pay a penalty not exceeding £50 (\$243.33).

Amount of penalty to be a charge on wages.

(2) Where a person is under this section ordered to pay a penalty, the court shall order that the amount of such penalty shall be a charge on any moneys which are then or which may thereafter be due to such person from his then or future employer, including the Crown, for wages or in respect of work done.

Such order may be for the payment of such penalty in one sum or by such installments as the court may direct.

On the making of any such order of attachment the employer on being notified thereof, shall, from time to time, pay such moneys into the court as they become due and payable in satisfaction of the charge imposed by the order.

No charge upon or assignment of his wages, or of moneys in respect of work done or to be done, whenever or however made by any such person shall have any force whatever to defeat or affect an attachment; and an order of attachment may be made and shall have effect as if no such charge or assignment existed.

Union to contribute to payments of penalty.

SEC. 46. (1) Where any person is under the last preceding section ordered to pay a penalty, and it appears that he was, at the time of his doing the acts complained of, a member of a trade or industrial union, the court may, in addition to making the charge provided for in the said section, order such union, or the trustees thereof, to pay out of the funds of the union any amount not exceeding £20 (\$97.33) of the penalty.

Union to be heard.

(2) The court shall, before making such order, hear the said trustees or the said union, and shall not make such order if it is proved that the union has by means that are reasonable under the circumstances bona fide endeavored to prevent its members from doing any act or thing in the nature of a lockout or strike, or from taking part in a lockout or strike, or from instigating to or aiding in a lockout or strike.

Penalty against union.

SEC. 47. If any industrial union or trade-union of employees instigates to or aids in any act for which any person is liable to be ordered to pay a penalty under section forty-five, the court may order such industrial or trade union to pay a penalty not exceeding £1,000 (\$4,866.50), and may in its discretion suspend the operation of or cancel the registration under this act of any such industrial union, and may, with the consent of the other parties bound by such award or industrial agreement, cancel any award whether made under the repealed acts or this act so far as it relates to the members of such industrial or trade union, or may do both those things.

Injunction.

Injunction to prohibit a lockout or strike.

SEC. 48. The court may grant a writ of injunction to restrain any person from continuing to instigate to or aid in a lockout or strike. Such writ, may upon application made as prescribed, be granted ex parte or on notice.

If any person disobeys such writ of injunction he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any period not exceeding six months.

Such person may be committed for trial for such offense by any justice or justices, acting under and in pursuance of the justices act, 1902, and any acts amending the same, or by the court.

For the purpose of such committal the court shall have the powers of a justice or justices under the said acts.

PART VII.—BREACHES OF AWARDS AND OTHER OFFENSES.

Payment of wages awarded.

Recovery of wages.

SECTION 49. (1) Where an employer employs any person to do any work for which the price or rate has been fixed by an award, or by an industrial agreement, whether made under the repealed acts or this

act he shall be liable to pay in full in money to such person and without any deduction the price or rate so fixed.

(2) Such person may, within six months after such money has become due, apply in the manner prescribed to the registrar or to an industrial magistrate for an order directing the employer to pay the full amount of any balance due in respect of such price or rate. Such order may be so made notwithstanding any smaller payment or any express or implied agreement to the contrary. The registrar or magistrate may make any order he thinks just, and may award costs to either party, and assess the amount of such costs. Order for payment.

(3) Such person may, within the said period of six months, in lieu of applying for an order under the last preceding subsection, sue for any balance due as aforesaid in any district court or court of petty sessions: *Provided*, That any person feeling himself aggrieved by a judgment or order of such court given or made under this subsection may appeal therefrom to the court of industrial arbitration as prescribed. Alternative power to sue.

(4) Such person may take any such proceedings, and may recover any such balance due, and costs, notwithstanding that he may not be of full age either at the time of doing such work or at the time of taking such proceedings. Recovery of balance due.

Breach of award or industrial agreement.

SEC. 50. (1) If any person commits a breach of an award or a breach of an industrial agreement, whether by contravening or failing to observe the same, or otherwise, the registrar or an industrial magistrate may order him to pay a penalty not exceeding £50 (\$243.33). Penalty for breach of award.

(2) Where on making such order it appears that the breach complained of relates to the failure of the defendant to pay in full any wages (including wages for overtime) due to the complainant at the price or rate fixed by the award or agreement, the registrar or magistrate may also make such an order with respect to such wages as might have been made in proceedings taken under section 49. Such order may be made without motion, and shall be a bar to proceedings under the said section in respect of such wages. Order for payment of wages.

(3) Where an order is made under subsection 1 of this section against any person, and the registrar or magistrate is of opinion that the breach was committed by the willful act or default of such person, he may on motion or without motion, and in addition to any order made, grant a writ of injunction to restrain such person from committing further or other breaches of the award or industrial agreement. Injunction where breach is willful.

If any person disobeys such writ of injunction he shall be guilty of a misdemeanor and shall be liable to imprisonment for any period not exceeding six months.

Such person may be committed for trial for such offense by any justice or justices acting under and in pursuance of the justices act, 1902, and any acts amending the same, or by the court. For the purposes of such committal the court shall have the powers of a justice or justices under the said acts.

(4) Proceedings for a breach of an award or an industrial agreement may be taken and prosecuted by the minister or an employer, or the secretary of an industrial union concerned in the industry covered by such award or industrial agreement. Who may take proceedings for penalty.

The costs of any such proceedings shall be paid by the complainant if the order is not made, and by the defendant if the order is made. Such costs shall be according to a scale to be fixed by the court.

SEC. 51. If the secretary of an industrial union of employees or any person acting or purporting to act on behalf of any such industrial union receives any money paid in respect of any act constituting a breach of an award or industrial agreement otherwise than in pursuance of the order or with the previous approval of the registrar or an industrial magistrate, he shall be liable to a penalty not exceeding £20 (\$97.33). Secretary of union receiving money for breach of award.

Unlawful dismissal.

Penalty for unlawful dismissal.

SEC. 52. If an employer dismisses from his employment any employee by reason of the fact that the employee is a member of a board or of a trade-union, or an industrial union, or has absented himself from work through being engaged in other duties as member of a board, or is entitled to the benefit of an award or of an industrial agreement, the court may order such employer to pay a penalty not exceeding £20 (\$97.33) for each employee so dismissed.

In every case it shall lie on the employer to satisfy the court that such employee was dismissed from his employment for some substantial reason other than that above mentioned in this section.

No prosecution for an offense under this section shall be commenced except by leave of the court.

PART VIII.—GENERAL AND SUPPLEMENTAL.

Fines and subscriptions payable to unions.

Fines and subscriptions payable to union.

SECTION 53. The registrar or an industrial magistrate may order the payment by any member of an industrial union of any fine, levy, penalty, or subscription payable in pursuance of the rules of the union.

Enforcement of certain orders.

SEC. 54. (1) Where an order is made under sections 44, 46, 47, 49, 50, 52, or 53, that any person or union shall pay the amount of any money due or any penalty, such order shall have the effect of a judgment for the amount of such money or of such penalty in the district court or court of petty sessions named in such order, or if no such court is so named, in the metropolitan district court at the suit of the Crown or person or union respectively, against the person or union against whom such order has been made; and such amount may be recovered and such recovery may be enforced by process of such court as in pursuance of such judgment.

Property of a union.

(2) Any property of a union, whether in the hands of trustees or not, shall be available to answer any order made as aforesaid.

Appeal to court.

Appeal from registrar or magistrate.

SEC. 55. (1) From any order of the registrar, or any industrial or other magistrate or justices under this act, imposing a penalty or ordering the payment of any sum of money or any penalty, an appeal shall lie to the court.

On any such appeal the court may either affirm the order appealed from or reverse the said order or reduce the amount so ordered to be paid or the amount of the penalty; and, in any case, the court may make such order as to the costs of the appeal, and of the proceedings before the registrar, magistrate, or justices, as it thinks just.

Case may be stated.

(2) The registrar, or any industrial or other magistrate or justices, may on the application made by any party to any proceedings for the payment of money or a penalty under this act state a case for the opinion of the court, setting forth the facts and the grounds for any order or conviction made by him or them.

Application of provisions of justices act.

(3) The provisions of the justices act, 1902, and any act amending the same which relate to appeals to a court of quarter sessions and to the stating of cases by justices for the opinion of the supreme court, and the decision of any such court thereon, and the carrying out of such decision shall, mutatis mutandis, and subject to any regulations made by the court under this act, apply to and in relation to appeals to and cases stated for the opinion of the court under this subsection.

No other appeals allowed.

(4) No other proceedings in the nature of an appeal from any such order or by prohibition shall be allowed.

Procedure and decisions of court and boards.

Rules to govern the court and boards.

SEC. 56. The court or a board exercising the jurisdiction conferred by this act shall be governed in its procedure and in its decisions by equity and good conscience, and shall not be bound to observe the rules of law governing the admissibility of evidence.

SEC. 57. Where the judge is unable to attend at the time and on the day appointed for the hearing of any matter by the court, the registrar, or, in his absence from the court, the chief clerk, shall adjourn the court, and also adjourn the hearing of any cases set down for that day to such day as he may deem convenient. Adjournments of court.

SEC. 58. (1) Any decision of the court shall be final; and no award, and no order or proceeding of the court shall be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever. Decision of court to be final.

(2) No writ of prohibition or certiorari shall lie in respect of any award, order, proceeding, or direction of the court relating to any industrial matter or any other matter which on the face of the proceedings appears to be or to relate to an industrial matter.

(3) The validity of any proceeding or decision of the board or of a chairman of a board shall not be challenged except as provided by this act.

SEC. 59. In any proceeding before the court it may reserve its decision. Court reserving its decision.
Where a decision has been so reserved it may be given at any continuation or adjournment of the court, or at any subsequent holding thereof, or the judge may draw up such decision in writing, and, having duly signed the same, forward it to the registrar. Whereupon the registrar shall notify the parties of his intention to proceed at some convenient time and place by him specified to read the same, and he shall read the same accordingly, and thereupon such decision shall be of the same force and effect as if given by the court.

Evidence of award and its validity.

SEC. 60. Evidence of any award, order, proclamation, notification, rule, or regulation made under the authority of this act or any of the repealed acts may be given by the production of any document purporting to be a copy thereof and purporting to be printed by the Government printer or by the authority of the minister. Copy of Gazette to be evidence.

Penalties and costs.

SEC. 61. Any penalty imposed by or under this act or the regulations may, except where otherwise provided, be recovered upon summary conviction before a stipendiary, police, or industrial magistrate, or any two justices in petty sessions. Recovery of penalties.

SEC. 62. The amount of any penalty recovered under this act shall be paid into the treasury and carried to the consolidated revenue fund. Penalties to be paid to consolidated revenue.

SEC. 63. (1) Except where otherwise in this act provided, the court or the registrar, or any industrial or other magistrate or justices, may in any proceedings for a penalty or prosecution under this act, and in any proceedings under section 53 or for a writ of injunction, make such order as to the payment of costs as may be thought just, and may assess the amount of such costs. Orders for costs.

(2) Every order for the payment of costs made by the court or the registrar or the industrial magistrate shall have the effect of and be deemed to be a judgment for such amount in the district court or court of petty sessions named in the order, or if no such court is so named, then in the metropolitan district court, at the suit of the person in whose favor such order is made, against the person so ordered to pay costs. Enforcement of order.

Such amount may be recovered, and such recovery may be enforced by process of such court as in pursuance of such judgment.

SEC. 64. Whosoever, before a board or the court, willfully makes on oath any false statement knowing the same to be false shall be guilty of perjury. Penalty for willfully false statement.

The registrar, industrial magistrate, and inspectors.

SEC. 65. (1) The governor may, subject to the public service act, 1902, appoint an industrial registrar who shall have the prescribed powers and duties. Appointment of registrar.

(2) The governor may appoint any person to act as a deputy for the registrar appointed under this act for a time not exceeding in any Deputy registrar.

case 30 days while such registrar is absent from his duties for any cause, and every such deputy shall while acting as such have the same jurisdiction and power, and perform the same duties as if he were the registrar.

His powers and duties.

(3) The judge may direct the registrar to inquire into any matter as to which he requires information for the purpose of the exercise of the jurisdiction of the court in any matter not being proceedings for a penalty under this act, and the registrar shall inquire accordingly, and report to the court.

For the purpose of such inquiry and for the purpose of any matter which by this act or the regulations is referred to him, the registrar may summon any persons, administer oaths and take affidavits, and examine parties and witnesses.

Powers of registrar.

Every person summoned by the registrar shall be bound to attend upon such summons, and shall for disobedience thereto be liable to a penalty not exceeding £50 (\$243.33).

Appointment and powers of industrial magistrates.

(4) For the purpose of hearing and determining any proceedings for a penalty or for the recovery of money under this act, the registrar shall have the powers of two justices of the peace within any police district.

SEC. 66. (1) The governor may appoint industrial magistrates, who shall have the qualifications of a police magistrate, and who shall throughout the State have the jurisdiction and powers conferred by this act on an industrial magistrate, and in the exercise of such jurisdiction may do alone whatever might be done by two or more justices sitting in petty sessions.

Deputy for industrial magistrate.

(2) The governor may appoint any person duly qualified as aforesaid to act as a deputy for any industrial magistrate appointed under this act for a time not exceeding in any case 30 days while such magistrate is absent from his duties for any cause, and every such deputy shall while acting as such have the same jurisdiction and power and perform the same duties as if he were an industrial magistrate.

Appointment and powers of inspectors.

SEC. 67. (1) The governor may, subject to the public service act, 1902, appoint inspectors, who shall have the powers and duties prescribed.

Any such inspector may exercise the following powers and perform the following duties in respect of an industry as to which an award or an industrial agreement is in force:

(a) He may at any reasonable times inspect any premises of any employer upon which any such industry as aforesaid is carried on, and any work being done therein.

(b) He may at any reasonable times require the employer in such industry to produce for his examination, and may examine, any time sheets and pay sheets of the employees in such industry.

(c) He may at any reasonable times examine any employee in such industry as to the prices for piecework and the rate of wages paid to him, and as to his hours of work as such employee.

(d) He may, on obtaining the authority of the minister, institute proceedings for a penalty under section 53.

An inspector shall report to the minister all breaches of this act, or of an award or industrial agreement, which have come to his knowledge.

(2) No inspector shall have any authority under this act to enter a private dwelling house, or the land used in connection therewith, unless some manufacture or trade in which labor is employed is carried on therein.

Obstructing inspector.

(3) If any person obstructs any inspector in the exercise of his powers under this act or fails when duly required as aforesaid to produce any time sheets or pay sheets, he shall be liable to a penalty not exceeding £10 (\$48.67).

Miscellaneous.

Time sheets and pay sheets to be kept.

SEC. 68. (1) Every employer in an industry in respect of which an award or an industrial agreement is in force shall keep, or cause to be kept, from day to day and at the place where his employees in such industry are working, in the manner and to the effect prescribed, time sheets and pay sheets of such employees, correctly written up in ink.

If he fails to carry out any of the requirements of this section he shall be liable to a penalty not exceeding £10 (\$48.67).

(2) A copy of any award whether made under the repealed acts or this act shall be exhibited and kept exhibited by every employer carrying on an industry to which it relates, at the place where the industry is carried on, so as to be legible by his employees. If such employer fails to carry out the provisions of this subsection he shall be liable to a penalty not exceeding £10 (\$48.67). Exhibition of award.

(3) The penalty imposed by each of the preceding subsections may in addition to being recoverable in terms of section 61 of this act, be ordered to be paid by the registrar or an industrial magistrate subject to the provisions of section 54 of this act.

SEC. 69. Employers and employees shall give at least 21 days' notice of an intended change affecting conditions of employment with respect to wages or hours or the prices of piecework. During any proceedings before a board, neither the employers nor the employees in the industry the subject of such proceedings shall alter the conditions of employment with respect to wages or hours, or the prices for piecework, unless upon the recommendation of the board that they be at liberty to do so. Notice of change affecting employment.

If any person fails to carry out any of the requirements of this section he shall be liable to a penalty not exceeding £50 (\$243.33).

SEC. 70. Any person who, either as principal or as an agent, makes or enters into any contract or agreement, or is or continues to be a principal of or engages in any combination or conspiracy with intent to restrain the trade of the State in any necessary commodity to the detriment of the public, shall be liable to a penalty not exceeding £500 (\$2,433.25). Penalty for contract or combination in restraint of trade.

SEC. 71. Any person who monopolizes or attempts to monopolize, or combines or conspires with any person to monopolize any part of the trade of the State with intent to control, to the detriment of the public, the supply or price of any necessary commodity, shall be liable to a penalty not exceeding £500 (\$2,433.25). Penalty for monopoly.

Regulations.

SEC. 72. The judge may repeal any regulations made under the repealed acts and make regulations for carrying out the provisions of this act, and the clerical workers act, 1910, and in particular, but without derogating from the generality of such powers— Regulations made by judge.

(a) Prescribing the forms of references and applications to a board and generally the forms to be used in carrying out this act.

(b) Prescribing the form of oath to be taken by members of boards and committees.

(c) Regulating the exhibition by an employer of an award.

(d) Prescribing the form and mode of service of notices of meetings of a board and of a committee, and regulating the convening of such meetings.

(e) Prescribing the giving of notice of inspection by a board or its members of premises used in any industry, and prescribing the form and regulating the service of such notice.

(f) Regulating the procedure at meetings of boards and committees.

(g) Providing for the payment of expenses of witnesses; and persons summoned by the registrar or summoned to attend a conference under the provisions of Part V.

(h) Regulating the procedure to be followed in proceedings before the court and before the registrar and an industrial magistrate, and in enforcing judgments, convictions, and orders given and made under this act.

(i) For the enforcement of orders for penalties and orders for attachments made under this act.

(j) Prescribing the powers and duties of the registrar, and regulating the registration under this act of industrial unions.

(k) Imposing any penalty not exceeding £10 (\$48.67) for any breach of such regulations.

(l) As to matters which by this act may be prescribed.

SEC. 73. (1) Regulations made under this act, on being approved by the governor and published in the Gazette, shall, if not disallowed as hereinafter provided, and if not repugnant to this act, have the force of law. Publication of regulations.

(2) All such regulations on being gazetted shall be laid before both houses of Parliament within 14 days if Parliament is then sitting, and, if not sitting, then within 14 days after the next meeting of Parliament. But if either house of Parliament passes a resolution of which notice has been given at any time within 15 sittings days after such regulations have been laid before such house disallowing any regulation, such regulation shall thereupon cease to have effect.

Assented to April 15, 1912.

SCHEDULES.

INDUSTRIES AND CALLINGS.

The following extended form of the Schedules I and II to the act displays the method of grouping of industries and callings, as at the end of 1912. The first schedule covers the majority of industries, and is capable of extension from time to time to meet the requirements of advancing opinions. The additions made to the original Schedule I, published in July, 1912, are indicated in italics:

Building trades:

Carpenters, joiners, stonemasons, bricklayers, slaters, shinglers, plasterers, gantry and crane men, painters, paperhangers, decorators, sign writers, plumbers, gasfitters, builders' laborers, and all other employees engaged in the erection, alteration, or demolition of buildings, monumental masons and assistants, marble and slate workers, *tuck pointers, tile layers, stone machinists and all other employees engaged in the preparation of stone for use in the erection of buildings.*

Clothing trades:

Tailors, tailoresses, machinists, cutters and trimmers, pressers, *brushers, folders, and examiners*, felt and straw hat makers, textile workers, and all other persons engaged in the manufacture of clothing, felt and straw hats, and textile goods.

Coal mining (north):

Coal miners, wheelers, surface hands, and other persons employed in or about coal mines north of Sydney.

Coal mining (south):

Coal miners, wheelers, surface hands, and other persons employed in or about coal mines in the Metropolitan and the South Coast districts.

Coal and shale mining (west):

Coal miners and shale miners, wheelers, surface hands, and other persons employed in and about coal and shale mines west of Sydney.

Domestic:

Hotel, club, restaurant, caterer, tea-shop, boarding-house, and oyster-shop employees, hairdressers, barbers, wigmakers, laundry employees, hospital nurses and attendants, ambulance employees; employees of insane asylums and public charitable institutions, *billiard markers, medical school laboratory and microbiology department attendants.*

Engine drivers:

Shore engine drivers, firemen, greasers, trimmers, cleaners, and pumpers.

Gas makers:

All persons employed in the making, distribution, supply and lighting of gas, or the reading of gas meters.

Food supply and distribution (No. 1):

Bakers and assistants, bread carters, pastry cooks, employees in biscuit and cake factories, confectioners; butchers employed in shops, factories, slaughterhouses, and meat-preserving works, including carters; fruit preparers and cannery and jam-factory employees; *candied-peel makers, employees in meat preserving works, poulterers, and assistants;* and yardmen, grooms, carters and laborers employed in connection with any such callings.

Food supply and distribution (No. 2):

Milk and ice carters, milk weighers and receivers, aerated water, cordial, and beverage makers, brewery employees, malt-house and distillery employees, bottlers, washers, wine and spirit store employees, ice manufacturers, cold-storage employees, freezing and cooling chamber employees; *persons engaged throughout the State of New South Wales in the manufacture of butterine and margarine and in butter, cheese, and bacon factories, and persons employed in the milk industry in the county of Cumberland, including employees of dairymen and milk vendors; grooms, laborers, and carters employed in connection with any such callings.*

Furniture trades:

Cabinetmakers, wood turners, french-polishers, upholsterers, chair makers, blind makers, mattress makers, wire-mattress makers, picture-frame makers, carpet planners, broom makers, brush makers, glassworkers, sawmill and timber-yard employees, wood machinists, coopers; wicker, pith-cane and bamboo workers; *wood carvers, pianoforte makers, billiard-table makers, loose-cover cutters, carpet cutters and fixers, and box and case makers, employees in box and case factories, and sawyers wherever employed; and yardmen, carters, grooms, and laborers employed in connection with any such callings.*

Government railways:

The employees of the chief commissioner of railways and tramways engaged on and in connection with the railways of the State.

Government tramways:

The employees of the chief commissioner of railways and tramways employed on and in connection with the tramways of the State.

Government employees:

The employees of the Sydney Harbor trust commissioners, the metropolitan board of water supply and sewerage, the Hunter district water supply and sewerage board, and fire brigade employees, and all employees on Government dredges; *assistants and attendants in the microbiological and other public bureaus of scientific investigation and research; nurses, attendants, and other employees in industrial homes, hospitals for the infirm, for the sick, and for the insane; health and sanitary inspectors.*

Iron and shipbuilding trades:

Engineers, smiths, boilermakers, iron-ship builders, angle-iron smiths, fitters, turners, pattern makers, iron molders, black-smiths, copper-smiths, tinsmiths, sheet-iron workers, makers of gas meters, makers, repairers, and fitters of cycles and motor-cycles, makers, fitters, repairers, and installers of electrical apparatus and installations, and persons employed in the maintenance of electrical apparatus and installations or in running electrical plant, engine drivers, firemen, greasers, trimmers, cleaners and pumpers employed on land, ship and boat builders, and ship painters and dockers, farriers, employees engaged in the manufacture of iron or steel, wire-netting makers, *wire-workers, wire-fence, nail and tubular gate makers, iron-pipe makers, molders, grinders, dressers, and polishers of any metal, and brass finishers, canister makers, metal-ceiling employees and sheet-metal fixers; employees engaged in the manufacture of metallic bedsteads, metallic cots, metallic chair-beds, and metal parts of perambulators, wagon and carriage makers and repairers, agricultural and pastoral implements, and machinery makers and repairers, stove, oven and grate makers and repairers, and piano-frame makers, ship joiners, and ship carpenters, and all other persons engaged in the iron and shipbuilding trades; and all laborers and assistants employed in connection with any such callings.*

Leather trades:

Boot, shoe, and slipper makers, coach makers, coach painters, coach trimmers, and wheelwrights, saddle, harness, portman-teau, and bag makers, leather makers, tanners and curriers, fell-mongers, wool classers, wool and basil workers, *leather dressers, and boot, shoe, and slipper repairers; and all laborers and assistants employed in connection with any such callings.*

Laborers:

Persons engaged in the construction of railways, tramways, roads, bridges, and water conservation and irrigation works, cement makers, concrete workers, rock choppers, plate layers, hammer and drill men, timberers, pipe layers, manhole builders, tool sharpeners, navvies with or without horses and drays, gangers, employees of shires or municipal councils and of the city council, timber getters and carters; *persons engaged in the demolition of buildings, sewer miners, lime burners and makers, surveyors' laborers*; and all laborers and assistants employed in connection with any such callings.

Manufacturing (No. 1):

Brick, tile, pipe, pottery, terra-cotta, and chinaware makers and carters, tobacco, cigar, and cigarette makers and employees, bag and sack makers, boiling-down employees, bone millers and manure makers, makers of kerosene, naphtha, and benzine, or any other shale products, *all persons engaged in or in connection with the manufacture and repair of rubber goods, sail, tent, and tarpaulin and canvas makers*; and all laborers and assistants employed in connection with any such callings.

Manufacturing (No. 2):

Cardboard-box makers, grain, starch, and mill employees, condiment makers, tea, starch, pickles, and condiment packers, soap and candle makers, jewelry manufacturers and jewelers, electroplaters, goldsmiths, silversmiths, gilders, chasers, engravers, lapidaries, *persons engaged in the manufacture or repair of watches, clocks, electroplate ware, spectacles, optician employees (mechanical), metal badge workers, wholesale drug factories' employees, coffee and other mill employees, persons employed in or in connection with the manufacture and refining of sugar, and in all the products of sugar cane*; and all laborers and assistants employed in connection with any such callings.

Metalliferous mining (Broken Hill):

Miners and all persons engaged in and about the mines and quarries and ore smelting, refining, treatment, and reduction works of Broken Hill.

Metalliferous mining (general):

Metalliferous miners, limestone miners, quarrymen, and all persons engaged in and about metalliferous and limestone mines, quarries, mining dredges, or sluicing processes, ore smelting and refining treatment and reduction works, *employees engaged in or in connection with mining for minerals other than coal or shale, and all persons engaged in and about diamond and gem-bearing mines*.

Pastoral and rural workers:

Wool classers in charge of wool rooms in shearing sheds, or in charge of both wool rooms and shearing boards, in shearing sheds, shearers, shearing-shed employees, shearers' cooks, wool pressers, roustabouts.

Printing trades:

Compositors, linotype, monoline, and other typesetting or type-casting machine operators, and attendants, letter-press machinists, bookbinders, paper rulers, lithographic workers, metal varnishers, stone polishers, guillotine machine cutters, process engravers, paper makers, and all persons employed in paper mills, stereotypers, electrotypers, readers, feeders, flyers, publishing employees, book sewers, folders, numberers, wire stitchers, perforators, embossers, tin-box makers, copperplate printers, metallic printers box cutters and cardboard-box makers, and all other persons employed in or in connection with the callings herein mentioned or the printing industry.

Professional and shop workers:

Professional musicians, journalists, and paragraph writers, and newspaper and magazine illustrators, shop assistants, cashiers in shops and office assistants in shops, warehouse employees, *employees in any branch of the process of photography, employees in dental workrooms and theatrical employees*.

Shipping:

Shipmasters, officers, marine engineers, *marine motor drivers and coxswains*, sailors, lamp trimmers, donkey men, greasers, firemen, *trimmers*, deckhands, stewards, cooks, persons employed on dredges, tugboats, and ferryboats, *turnstile hands, ticket and change hands, wharf cleaners, and all other persons employed in connection with ferry services.*

Transport:

Drivers and loaders of trolleys, drays, and carts, wharf laborers and stevedores, coal lumpers and coal trimmers, cab and omnibus drivers, motor-wagon drivers, wood and coal carters, yardmen, grooms and stablemen, storemen and packers; and all persons in any way employed in connection with the carting of goods, produce, or merchandise.

Miscellaneous:

Billposters, undertakers, and undertakers' assistants and drivers, livery stable employees, *drivers and buggy boys employed in connection with the use of light vehicles for commercial purposes*, cab, omnibus, taxicab, and motor-car drivers; coke workers, rope-makers, lift attendants, office cleaners and caretakers, watchmen, *caretakers and cleaners employed in or in connection with any place of business, employees engaged in the working and maintenance of privately owned railways.*

Any such division, combination, arrangement, or regrouping of the employees in the industries or callings mentioned in this schedule, whether according to occupation or locality as the minister, on the recommendation of the court, may direct.

REGULATIONS UNDER INDUSTRIAL ARBITRATION ACT, 1912.

[Gazetted May 1, 1912.¹]

I, Edward Scholes, deputy judge of the court of industrial arbitration, constituted under the "Industrial arbitration act, 1912," do hereby, in pursuance of the powers conferred upon me by the said act, make the following regulations for carrying out the provisions of the said act and the "Clerical workers act, 1910."

CONSTITUTION OF BOARDS.

Constitution and dissolution of boards for industries, appointment of chairmen and members, and removal of members.

15. The court will, on days to be appointed, of which due notice as hereinafter prescribed shall be given, proceed to inquire as to what boards and with what transposition, division, combination, rearrangement, or regrouping of the industries or callings shall be recommended to the minister for constitution, or appointment; and as to what chairman; and as to what persons as members and what number of members of such boards shall be recommended by the court to the minister for appointment; and as to what boards shall be recommended to the minister for dissolution, and as to what member or members of a board shall be recommended to the minister for removal from office: *Provided*, That where such inquiry involves Schedule II of the act, the court shall also inquire as to what matters (relating to such of the industries or callings or sections thereof as are mentioned in such schedule) specified by the court in its recommendation to the minister shall be within the jurisdiction of the board.

16. The court will cause to be advertised in Form 10 hereto in two metropolitan daily newspapers, and in such other newspapers circulating in any specific locality as the court may think proper, and cause to be served upon the secretary of any industrial union which shall appear to the court to be concerned in the matter a notice of the days and times at which the court will sit, and as to what boards and industries shall upon those days and at those times be dealt with for the purpose

¹ New South Wales Industrial Gazette, Vol. I, No. 2, August, 1912, pp. 1088 et seq.

of making such investigations as the court shall think necessary and advisable for the purpose.

17. All parties interested shall have the right to appear before the court and make such representations as they may think fit.

18. The facts upon which any such parties shall rely shall be brought before the court upon affidavits made by persons competent to affirm thereupon.

19. On such inquiry the court may make such orders, give such directions, and require such further evidence as it may deem necessary for the purpose of informing itself on any matters necessary for due investigation of the matters in question.

The registrar shall cause such orders as the court may make on such investigation to be served upon the persons concerned, or otherwise carried into effect.

The recommendation.

20. A recommendation of the court shall be signed by the judge and sealed with the seal of the court by the registrar, and by him forwarded to the minister.

PROCEDURE OF BOARDS.

50. The chairman of the board shall be notified by the registrar of the constitution or appointment of such board, and he shall thereupon convene a meeting of the board, to be held at such time and place as he shall appoint, by serving or causing to be served upon each member of the board a notice in Form 16 hereto. Such service may be duly effected by posting such notice in a prepaid letter addressed to such member at his address.

Every meeting of a board, subsequent to the first, shall be held at the time and place to which the board has adjourned the proceedings. Where the board has not adjourned the proceedings to a time and place, a majority of the members may, by writing, require the chairman to convene a meeting at a time and place specified; and the chairman, by service of notice as above specified, shall convene a meeting in accordance with the requisition. In the absence of any such requisition the chairman may, in similar manner, convene a meeting at such time and place as he thinks proper.

51. Application to the court to refer to a board any matter within the jurisdiction of such board shall be made by motion upon notice.

The order of reference shall be in Form 17 hereto.

52. Reference by the minister to a board shall be in Form 18 hereto.

53. Application to a board shall be in Form 19 hereto, the matters claimed by the applicant being set out in the application in separate paragraphs numbered consecutively. The application shall be addressed to and shall be lodged with the chairman of the board.

54. Where any matter has been referred to the board, or where application has been made to the board, the chairman may direct that notice in Form 20 hereto, or to a like effect, shall be served on such firms, industrial unions, or persons, in such manner as he thinks fit, and published with necessary modifications in such newspapers as he thinks fit.

55. Every application to a board by an employer or employers shall be accompanied by a statutory declaration by such employer or employers that he is an employer or that they are employers of not less than 20 employees in the industry or industries in respect of which such application is made.

56. The procedure to be followed at any meeting of a board shall be as follows, provided that the chairman of the board may, if he think fit, vary the procedure herein prescribed, according to circumstances, in order to give to all parties such representation as he thinks fair.

- (1) The chairman of the board shall inform the board of any reference or application made through him.
- (2) The chairman shall determine the procedure before the board, and give such directions as to notice as he thinks fit.
- (3) At the hearing, the case for the applicant or the person conducting any reference shall be stated.
- (4) Evidence shall be called for the applicant or such person.

- (5) Witnesses shall be examined in the manner following:
 - (a) The applicant or his representative or the person conducting the reference shall conduct the examination in chief.
 - (b) The respondent or his representative shall conduct the cross-examination.
 - (c) Any member of the board may examine a witness.
 - (d) Any further question shall be put by permission of the chairman of the board in the manner directed by the chairman.
- (6) The case for the applicant or person conducting the reference shall then close.
- (7) The procedure laid down in clauses (3), (4), (5), and (6), with regard to the case for the applicant shall apply, *mutatis mutandis*, to the case for the respondent.
- (8) Evidence may be called by the applicant or the person conducting the reference in reply.
- (9) The board may call witnesses.
- (10) Such witnesses may, by permission of the chairman of the board, be examined or cross-examined by any of the parties.
- (11) The person or persons appearing on behalf of the respondent may then address the board.
- (12) The person or persons appearing on behalf of the applicant or the person conducting the reference may then address the board, when, unless otherwise ordered by the chairman, the hearing shall close.

57. Notice of an inspection under section 33 of the act shall be in Form 21 hereto, and shall be served by leaving it with the person ostensibly in charge of the premises in question during working hours, 24 hours at least previous to such inspection.

58. A summons to a witness shall be in Form 22 or Form 23 hereto, and shall be signed by the chairman of the board. Service may be effected by delivering a copy to the witness, and at the same time producing the original for his inspection if so desired. Any number of witnesses may be included in one summons, but the copy served need contain only the name of the witness upon whom it is served.

59. The chairman of a board shall keep or cause to be kept a record of the sittings of the board, of the times of attendance of each member of the board, and of the witnesses appearing before the board, and shall forward or cause the same to be forwarded to the registrar on the making of the award.

60. When a board has embodied its determination in an award, the chairman of the board shall forward to the registrar such award, and (for record purposes) all application papers and documents used in connection with the hearing and all notes of the proceedings before such board.

61. The oath to be taken by each member of a board and accountant, under section 34 of the act, shall be in Form 24 hereto.

62. Any person appointed to a board may resign his office by forwarding a written notice of resignation to the registrar.

No member of a board shall appear before the board as an advocate for or agent of any party before the board.

63. Appeals to the court under section 35 (3) of the act shall be made by motion upon notice.

64. Either party to a proceeding may at any time before the hearing, or at the hearing apply to the judge in chambers, or in court, or to the chairman of a board, for the consent of the court or chairman, that a person who is not or has not been actually and bona fide engaged in one of the industries or callings in respect of which such proceeding is taken may appear as an advocate or agent.

BREACHES OF AWARDS AND OTHER OFFENSES.

Application for order under section 49.

76. Upon application for an order under section 49 of the act, the complaint shall be filed in the office of the registrar.

Upon the hearing of such application, the applicant and defendant may appear, and each conduct his case by himself, or by any counsel or

attorney, or by any agent duly authorized by him in writing, provided that such authority shall be filed with the registrar.

Appeal from district court under section 49.

77. Every appeal from a judgment or order of any district court or court of petty sessions under section 49 of the act shall be made within 21 days by motion upon notice.

Breach of award or industrial agreement.

78. Proceedings for an order under section 50 of the act shall be commenced by complaint filed in the office of the registrar.

Motion for writ of injunction before registrar or industrial magistrate.

79. The motion for a writ of injunction under section 50 of the act shall be a motion upon notice in the form, mutatis mutandis, 12 hereto, and shall be served as directed by the registrar or industrial magistrate. The writ of injunction shall be in the form, mutatis mutandis, 28 hereto.

Committal for trial under section 50.

80. Proceedings for committal for trial by the court under section 50 of the act shall be commenced by information filed in the office of the registrar.

Scale of costs.

81. The scale of costs to be fixed by the court under section 50 subsection 4 of the act shall, in addition to the amount of the fees of court, be as follows:

If counsel appears—

	£.	s.	d.	
Where the hearing does not extend beyond 5 hours.....	3	3	0	(\$15. 33)
Where the hearing extends beyond 5 hours but not beyond 10 hours.....	4	4	0	(\$20. 44)
Where the hearing extends beyond 10 hours.....	6	6	0	(\$30. 66)

If an attorney without counsel appears—

Where the hearing does not extend beyond 5 hours.....	2	2	0	(\$10. 22)
Where the hearing extends beyond 5 hours but not beyond 10 hours.....	3	3	0	(\$15. 33)
Where the hearing extends beyond 10 hours.....	5	5	0	(\$25. 55)

If neither counsel nor attorney appears, but the case is conducted by an industrial inspector or by the party or his agent—

For each day or part of a day.....	10	0	0	(\$2. 43)
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Proceedings for penalty under section 51.

82. Proceedings for a penalty under section 51 of the act taken before an industrial magistrate shall be by information filed in the office of the registrar.

Proceedings for unlawful dismissal under section 52.

83. The proceedings for an offense under section 52 of the act shall be commenced after leave of the court first obtained by summons. Application to the court for such leave shall be by motion.

Settlement by registrar.

97. The registrar shall settle the minutes of the award, order, or direction, provided that if any party be dissatisfied as to the form in which the minutes have been settled, he may, within two days of the settlement thereof, apply to the court to vary the minutes as settled.

Registrar may settle without appointment.

98. The registrar may, by order or leave of the court or the judge, settle and pass any award, order, or direction without making any appointment to do so, or upon an appointment returnable forthwith, or without notice to any party.

Awards, etc., to be signed by judge and filed.

99. Every such award, order, and direction shall be approved and signed by the judge, and be filed with the registrar.

Publication of awards.

100. Every such award, order, or direction made on appeal from a board, or rescinding or varying any award, order, or direction shall, when signed by the judge and filed with the registrar, be published in the Government Gazette and in such newspapers as the judge directs.

Fees.

117. The fees to be demanded by and paid to the registrar shall be as follows:

On every summons or notice of motion issued, including filing fee.....	s. d.	
	2 6	(\$0.61)
On every order or determination of the court or judge, including filing.....	2 6	(\$0.61)
Affixing seal of court to any document...	5 0	(\$1.22)
On filing application for registration.....	5 0	(\$1.22)
On filing notice of objection to registration	2 0	(\$0.49)
On filing answer to notice of objection...	1 0	(\$0.24)
On filing application for cancellation.....	2 0	(\$0.49)
On filing answer to application for cancellation.....	2 0	(\$0.49)
On filing industrial agreement or rescission or variation of industrial agreement	5 0	(\$1.22)
On filing affidavit.....	1 0	(\$0.24)
On filing any other document.....	2 0	(\$0.49)
For issuing certificate of registration.....	10 0	(\$2.43)
Search.....	1 0	(\$0.24)
Inspection.....	1 0	(\$0.24)
For preparation of any document, per folio of 72 words.....	1 0	(\$0.24)
For copy of any document, per folio of 72 words.....	4	(\$0.08)
On every order or determination of the registrar (including filing fee).....	2 6	(\$0.61)
For certificate of registrar.....	2 6	(\$0.61)
On every appointment before registrar...	1 0	(\$0.24)

The fees to be paid in proceedings before an industrial magistrate or the registrar in the exercise of the powers of justices in petty sessions shall be according to the scale of fees fixed under the "Justices fees act, 1904," and published in the Government Gazette of August 3, 1910.

Allowances to witnesses, etc.

118. The scale of allowances to witnesses and persons summoned by the registrar, or summoned to attend a conference under the provisions of Part V of the act, shall be;

Barristers, solicitors, medical practitioners, surveyors, architects, and other professional men, per day, £1 ls. (\$5.11).

If country witnesses, an additional daily allowance, 5s. to £1 ls. (\$1.22 to \$5.11).

Merchants, bankers, accountants, auctioneers, and the like, per day, 10s. 6d. to £1 ls. (\$2.56 to \$5.11).

If country witnesses, an additional daily allowance, 5s. to 12s. 6d. (\$1.22 to \$3.04).

Tradesmen, master mariners, clerks, and the like, per day, 7s. 6d. to 15s. (\$1.83 to \$3.65).

If country witnesses, an additional daily allowance, 2s. to 6s. (\$0.49 to \$1.46).

Artisans, journeymen, sailors, laborers, and the like, per day, 5s. to 12s. (\$1.22 to \$2.92).

If country witnesses, an additional daily allowance, 2s. to 6s. (\$0.49 to \$1.46).

Female witnesses, according to station in life, 2s. 6d. to 10s. 6d. (\$0.61 to \$2.56).

If country witnesses, an additional daily allowance, 2s. to 6s. (\$0.49 to \$1.46).

No witness shall be deemed to be a country witness who resides within 5 miles of the principal post office or courthouse of the town where the suit is tried, or who ordinarily proceeds to some office or place of employment within 5 miles of such post office or courthouse.

In addition to the above allowances, country witnesses may be allowed such sums as the court, industrial magistrate, or registrar thinks reasonable, to provide for actual expenses of conveyance to and from the place of trial, excluding any charges for maintenance or sustenance or of traveling.

Time sheets and pay sheets.

119. The time sheets and pay sheets referred to in section 68 of the act shall be written up in English letters and figures, and shall contain the following particulars—

(1) The full names of the employees in the industry.

(2) The occupation and classification of the employees under the award or industrial agreement by which the industry is governed.

(3) The number of hours worked by each employee during each week, and where there is in the award a limitation of the daily hours of work in respect of any class of employee, and where provision is made for payment of daily overtime, the number of hours worked by each employee in such class during each day, and also the time or times of starting work and the time or times of ceasing work.

(4) Where the award or industrial agreement prescribes (a) a weekly, daily, or hourly rate of wage—the rate of wages per week, day or hour at which each employee is paid; (b) piecework—the number and description of pieces made by each employee, and the rate per piece at which such employee is paid.

(5) The amount of wages paid to each employee, showing deductions from such wages.

(6) Such other particulars as may be necessary to show on inspection that the hours, rates, or wages, and payment for overtime as laid down by the said award or industrial agreement are being complied with in every particular.

(7) When an employee is an apprentice, his age and the date of his apprenticeship.

Exhibition of awards.

120. Every award required by section 68 of the act to be exhibited and kept exhibited by an employer shall be exhibited and kept exhibited by the employer by being securely attached to a wall, partition, or other fixture, or notice board, at the place where the industry is carried on, so as to be legible by his employees either in their passage to or from their work or during the performance of their work.

NEW ZEALAND.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT, 1908.

Short title.

SECTION 1. (1) The short title of this act is "The industrial conciliation and arbitration act, 1908."

Interpretation.

SEC. 2 (as amended by act No. 239, 1908). (1) In this act, if not inconsistent with the context—

"Board" means a board of conciliation for an industrial district constituted under this act.

"Court" means the court of arbitration constituted under this act.

"Employer" includes persons, firms, companies, and corporations employing one or more workers.

"Industrial association" means an industrial association registered under this act.

"Industrial dispute" means any dispute arising between one or more employers or industrial unions or associations of employers and one or more industrial unions or associations of workers in relation to industrial matters.

"Industrial matters" means all matters affecting or relating to work done or to be done by workers, or the privileges, rights, and duties of employers or workers in any industry, not involving questions which are or may be the subject of proceedings for an indictable offense; and, without limiting the general nature of the above definition, includes all matters relating to—

(a) The wages, allowances, or remuneration of workers employed in any industry, or the prices paid or to be paid therein in respect of such employment

(b) The hours of employment, sex, age, qualification, or status of workers, and the mode, terms, and conditions of employment;

(c) The employment of children or young persons, or of any person or persons or class of persons, in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein;

(d) The claim of members of an industrial union of employers to preference of service from unemployed members of an industrial union of workers;

(e) The claim of members of industrial unions of workers to be employed in preference to nonmembers;

(f) Any established custom or usage of any industry, either generally or in the particular district affected

"Industrial union" means an industrial union registered under this act.

"Industry" means any business, trade, manufacture, undertaking, calling, or employment in which workers are employed.

"Judge" means the judge of the court of arbitration.

"Officer" when used with reference to any union or association, means president, vice president, treasurer, or secretary.

"Prescribed" means prescribed by regulations under this act.

"Registrar" means the registrar of industrial unions under this act.

"Supreme court office" means the office of the supreme court in the industrial district wherein any matter arises to which such expression relates; and, where there are two such offices in any such district, it means the office which is nearest to the place or locality wherein any such matter arises.

"Trade-union" means any trade-union registered under "The trade-unions act, 1908," whether so registered before or after the coming into operation of this act.

"Worker" means any person of any age of either sex employed by any employer to do any skilled or unskilled manual or clerical work for hire or reward.

(2) In order to remove any doubt as to the application of the foregoing definitions of the terms "employer," "industry," and "worker," it is hereby declared that for all the purposes of this act an employer shall be deemed to be engaged in an industry when he employs workers who by reason of being so employed are themselves engaged in that industry, whether he employs them in the course of his trade or business or not.

SEC. 3. The minister of labor shall have the general administration of this act. Administration of act.

SEC. 5 (as amended by act No. 239, 1908, and act No. 33, 1911). Subject to the provisions of this act, any society consisting of not less than three persons in the case of employers, or fifteen in the case of workers, lawfully associated for the purpose of protecting or furthering Registration of societies.

the interests of employers or workers in or in connection with any specified industry or industries in New Zealand, may be registered as an industrial union under this act on compliance with the following provisions:

(a) An application for registration shall be made to the registrar in writing, stating the name of the proposed industrial union, and signed by two or more officers of the society.

(b) Such application shall be accompanied by—

(i) A list of the members and officers of the society with the locality in which the members and officers reside or exercise their calling.

(ii) Two copies of the rules of the society.

(iii) A copy of a resolution passed by a majority of the members present at a general meeting of the society, specially called in accordance with the rules for that purpose only, and desiring registration as an industrial union of employers, or, as the case may be, of workers.

(c) Such rules shall specify the purposes for which the society is formed, and shall provide for—

(i) The appointment of a committee of management, a chairman, secretary, and any other necessary officers, and, if thought fit, of a trustee or trustees.

(ii) The powers, duties, and removal of the committee, and of any chairman, secretary, or other officer or trustee, and the mode of supplying vacancies.

(iii) The manner of calling general or special meetings, the quorum thereat, the powers thereof, and the manner of voting thereat.

(iv) The mode in which industrial agreements and any other instruments shall be made and executed on behalf of the society, and in what manner the society shall be represented in any proceedings before a board or the court.

(v) The custody and use of the seal, including power to alter or renew the same.

(vi) The control of the property, the investment of the funds, and an annual or other shorter periodical audit of the accounts.

(vii) The inspection of the books and the names of the members by every person having an interest in the funds.

(viii) A register of members, and the mode in which and the terms on which persons shall become or cease to be members, and so that no member shall discontinue his membership without giving at least three months' previous written notice to the secretary of intention so to do, nor until such member has paid all fees, fines, levies, or other dues payable by him under the rules, except pursuant to a clearance card duly issued in accordance with the rules.

(ix) The purging of the rolls by striking off any members in arrears of dues for twelve months; but this is not to free such discharged persons from arrears due.

(x) The conduct of the business of the society at some convenient address to be specified, and to be called "the registered office of the society."

(xi) The amendment, repeal, or alteration of the rules, but so that the foregoing requirements of this paragraph shall always be provided for.

(xii) Any other matter not contrary to law.

Same subject.

SEC. 6. (1) On being satisfied that the society is qualified to register under this act, and that the provisions of the last preceding section hereof have been complied with, the registrar shall, without fee, register the society as an industrial union pursuant to the application, and shall issue a certificate of registration, which, unless proved to have been canceled, shall be conclusive evidence of the fact of such registration and of the validity thereof.

(2) The registrar shall at the same time record the rules, and also the situation of the registered office.

Incorporation
of societies.

SEC. 7. (1) Every society registered as an industrial union shall, as from the date of registration, but solely for the purposes of this act, become a body corporate by the registered name, having perpetual succession and a common seal, until the registration is canceled as herein-after provided.

(2) There shall be inserted in the registered name of every industrial union the word "employers" or "workers," according as such union is

a union of employers or workers, and also (except in the case of an incorporated company) the name of the industry in connection with which it is formed and the locality in which the majority of its members reside or exercise their calling, as thus: "The [Christchurch grocers'] industrial union of employers"; "The [Wellington tram drivers'] industrial union of workers."

Sec. 8. With respect to trade-unions the following special provisions shall apply, anything hereinbefore contained to the contrary notwithstanding. Registration of trade-unions.

(a) Any such trade-union may be registered under this act by the same name (with the insertion of such additional words as aforesaid).

(b) For the purposes of this act every branch of a trade-union shall be considered a distinct union, and may be separately registered as an industrial union under this act.

(c) For the purposes of this act the rules for the time being of the trade-union, with such addition or modification as may be necessary to give effect to this act, shall, when recorded by the registrar, be deemed to be the rules of the industrial union.

Sec. 9. With respect to the registration of societies of employers the following special provisions shall apply: Registration of societies of employers.

(a) In any case where a copartnership firm is a member of the society, each individual partner residing in New Zealand shall be deemed to be a member, and the name of each such partner (as well as that of the firm) shall be set out in the list of members accordingly, as thus: "Watson, Brown & Co., of Wellington, boot manufacturers; the firm consisting of four partners, of whom the following reside in New Zealand—that is to say, John Watson, of Wellington, and Charles Brown, of Christchurch": *Provided*, That this paragraph shall not apply where the society to be registered is an incorporated company.

(b) Except where its articles or rules expressly forbid the same, any company incorporated under any act may be registered as an industrial union of employers, and in such case the provisions of section five hereof shall be deemed to be sufficiently complied with if the application for registration is made under the seal of the company, and pursuant to a resolution of the board of directors, and is accompanied by—

(i) A copy of such resolution.

(ii) Satisfactory evidence of the registration or incorporation of the company.

(iii) Two copies of the articles of association or rules of the company.

(iv) A list containing the names of the directors, and of the manager or other principal executive officer of the company.

(v) The situation of the registered office of the company.

(c) Where a company registered out of New Zealand is carrying on business in New Zealand through an agent acting under a power of attorney, such company may be registered as an industrial union of employers, and in such case the provisions of section five hereof shall be deemed to be complied with if the application to register is made under the hand of the agent for the company, and is accompanied by— Registration of foreign companies.

(i) Satisfactory evidence of the registration or incorporation of the company.

(ii) Two copies of its articles of association or rules.

(iii) The situation of its registered office in New Zealand.

(iv) A copy of the power of attorney under which such agent is acting.

(v) A statutory declaration that such power of attorney has not been altered or revoked.

(d) In so far as the articles or rules of any such company are repugnant to this act they shall, on the registration of the company as an industrial union of employers, be construed as applying exclusively to the company and not to the industrial union.

Sec. 10. In no case shall an industrial union be registered under a name identical with that by which any other industrial union has been registered under this act, or by which any other trade-union has been registered under "The trade-unions act, 1908," or so nearly resembling any such name as to be likely to deceive the members or the public. Societies not registered under similar names.

Provision to prevent multiplicity of unions.

SEC. 11. In order to prevent the needless multiplication of industrial unions connected with the same industry in the same locality or industrial district, the following special provisions shall apply:

(a) The registrar may refuse to register an industrial union in any case where he is of opinion that in the same locality or industrial district and connected with the same industry there exists an industrial union to which the members of such industrial union might conveniently belong:

Provided, That the registrar shall forthwith notify such registered industrial union that an application for registration has been made.

(b) Such industrial union, if dissatisfied with the registrar's refusal, may in the prescribed manner appeal therefrom to the court, whereupon the court, after making full inquiry, shall report to the registrar whether in its opinion his refusal should be insisted on or waived, and the registrar shall be guided accordingly:

Provided, That it shall lie on the industrial union to satisfy the court that, owing to distance, diversity of interest, or other substantial reason, it will be more convenient for the members to register separately than to join any existing industrial union.

Effect of registration.

SEC. 12. The effect of registration shall be to render the industrial union, and all persons who are members thereof at the time of registration, or who after such registration become members thereof, subject to the jurisdiction by this act given to a board and the court respectively and liable to all the provisions of this act, and all such persons shall be bound by the rules of the industrial union during the continuance of their membership.

Branch office of industrial union.

SEC. 14. (1) In addition to its registered office, an industrial union may also have a branch office in any industrial district in which any of its members reside or exercise their calling.

(2) Upon application in that behalf by the union, under its seal and the hand of its chairman or secretary, specifying the situation of the branch office, the registrar shall record the same, and thereupon the branch office shall be deemed to be registered.

(3) The situation of the registered office and of each registered branch office of the industrial union may be changed from time to time by the committee of management, or in such other manner as the rules provide.

(4) Every such change shall be forthwith notified to the registrar by the secretary of the union, and thereupon the change shall be recorded by the registrar.

Industrial union may sue in registered name. Service of notices.

SEC. 18. Every industrial union may sue or be sued for the purposes of this act by the name by which it is registered; and service of any process, notice, or document of any kind may be effected by delivering the same to the chairman or secretary of such union, or by leaving the same at its registered office (not being a branch office), or by posting the same to such registered office in a duly registered letter addressed to the secretary of the union.

Amalgamation of industrial unions.

SEC. 20 (as amended by act No. 33, 1911). (1) Whenever two or more industrial unions in the same industrial district connected with the same industry desire to amalgamate so as to form one union and carry out such desire by registering a new industrial union, the registrar shall place upon the certificate of registration of such new union a memorandum of the names of the unions whose registration is shown to his satisfaction to have been canceled in consequence of such amalgamation and registration.

(2) Where there is more than one award or industrial agreement in force relating to that industry within the same industrial district or any part thereof the court, on the application of any party to any such award or industrial agreement may by order adjust the terms of such awards or industrial agreements and such order shall have effect as if it were a new award or industrial agreement.

(3) Until such order is made such amalgamation shall not have effect on any existing award or industrial agreement.

Cancellation of registration.

SEC. 21. Any industrial union may at any time apply to the registrar in the prescribed manner for a cancellation of the registration thereof, and thereupon the following provisions shall apply:

(a) The registrar, after giving six weeks' public notice of his intention to do so, may, by notice in the Gazette, cancel such registration:

Provided, That in no case shall the registration be canceled during the progress of any conciliation or arbitration proceedings affecting such union until the board or court has given its decision or made its award, nor unless the registrar is satisfied that the cancellation is desired by a majority of the members of the union.

(b) The effect of the cancellation shall be to dissolve the incorporation of the union, but in no case shall the cancellation or dissolution relieve the industrial union, or any member thereof, from the obligation of any industrial agreement, or award or order of the court, nor from any penalty or liability incurred prior to such cancellation.

SEC. 22. (1) If an industrial union makes default in forwarding to the registrar the returns required by section 17 hereof, and the registrar has reasonable cause to believe that the union is defunct, he may send by post to the last-known officers of the union a letter calling attention to the default, and inquiring whether the union is in existence.

Cancellation of registration of defunct union.

(2) If within two months after sending such letter the registrar does not receive a reply thereto, or receives a reply from any one or more of the officers to the effect that the union has ceased to exist, he may insert in the Gazette, and send to the last-known officers of the union, a notice declaring that the registration of the union will, unless cause to the contrary is shown, be canceled at the expiration of six weeks from the date of such notice.

(3) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is shown, strike the name of the union off the register, and shall publish notice thereof in the Gazette, and thereupon the registration of the union shall be canceled.

SEC. 23 (as amended by act No. 239, 1908). (1) Any council or other body, however designated, representing not less than two industrial unions of either employers or workers may be registered as an industrial association of employers or workers under this act.

Registration of councils.

(2) All the provisions of this act relating to industrial unions, their officers and members, shall, *mutatis mutandis*, extend and apply to an industrial association, its officers and members, and these provisions shall be read and construed accordingly in so far as the same are applicable:

Application of prior provisions.

Provided, That an industrial association shall not be entitled to nominate or vote for the election of members of the board, or to recommend the appointment of a member of the court.

SEC. 24. (1) An industrial dispute may relate either to the industry in which the party by whom the dispute is referred for settlement to a board or the court, as hereinafter provided, is engaged or concerned, or to any industry related thereto.

Industrial disputes in related trades.

(2) An industry shall be deemed to be related to another where both of them are branches of the same trade, or are so connected that industrial matters relating to the one may affect the other: Thus, bricklaying, masonry, carpentering, and painting are related industries, being all branches of the building trade, or being so connected as that the conditions of employment or other industrial matters relating to one of them may affect the others.

(3) The governor may from time to time, by notice in the Gazette, declare any specified industries to be related to one another, and such industries shall be deemed to be related accordingly.

(4) The court shall also in any industrial dispute have jurisdiction to declare industries to be related to one another.

SEC. 25. (1) The parties to industrial agreements under this act shall in every case be trade-unions or industrial unions or industrial associations or employers; and any such agreement may provide for any matter or thing affecting any industrial matter, or in relation thereto, or for the prevention or settlement of an industrial dispute.

Industrial agreements.

(4) Notwithstanding the expiry of the term of the industrial agreement, it shall continue in force until superseded by another industrial agreement, or by an award of the court, except where, pursuant to the provisions of sections 21 or 22 hereof, the registration of an industrial union of workers bound by such agreement has been canceled.

SEC. 31. (1) The governor may from time to time, by notice in the Gazette, constitute and divide New Zealand or any portion thereof into such industrial districts, with such names and boundaries, as he thinks fit.

Industrial districts.

- (2) All industrial districts constituted under any former act relating to industrial conciliation and arbitration and existing on the coming into operation of this act shall be deemed to be constituted under this act.
- Alteration of boundaries.** SEC. 32. If any industrial district is constituted by reference to the limits or boundaries of any other portion of New Zealand defined or created under any act, then, in case of the alteration of such limits or boundaries, such alteration shall take effect in respect of the district constituted under this act without any further proceeding, unless the governor otherwise determines.
- Clerk of awards.** SEC. 33. (1) In and for every industrial district the governor shall appoint a clerk of awards (elsewhere in this act referred to as "the clerk"), who shall be paid such salary or other remuneration as the governor thinks fit, and shall be subject to the control and direction of the registrar.
- Duties of clerk.** SEC. 35. It shall be the duty of the clerk—
- (a) To receive, register, and deal with all applications within his district lodged for reference of any industrial dispute to the board or to the court.
 - (b) To convene the board for the purpose of dealing with any such dispute.
 - (c) To keep a register in which shall be entered the particulars of all references and settlements of industrial disputes made to and by the board, and of all references, awards, and orders made to and by the court.
 - (d) To forward from time to time to the registrar copies of or abstracts from the register.
 - (e) To issue all summonses to witnesses to give evidence before the board or court, and to issue all notices and perform all such other acts in connection with the sittings of the board or court as are prescribed, or as the court, the board, or the registrar directs.
 - (f) Generally to do all such things and take all such proceedings as are prescribed by this act or the regulations thereunder, or as the court, the board, or the registrar directs.
- District boards of conciliation.** SEC. 36. In and for every industrial district there shall be established a board of conciliation, which shall have jurisdiction for the settlement of any industrial dispute which arises in such district and is referred to the board under the provisions in that behalf hereinafter contained.
- Number of members of board, and election.** SEC. 37. The board of each industrial district shall consist of such unequal number of persons as the governor determines, being not more than five, of whom—
- (a) One (being the chairman) shall be elected by the other members in manner hereinafter provided; and
 - (b) The other members shall, in manner hereinafter provided, be elected by the respective industrial unions of employers and of workers in the industrial district, such unions voting separately and electing an equal number of such members:
- Provided,* That an industrial union shall not be entitled to vote unless its registered office has been recorded as aforesaid for at least three months next preceding the date fixed for the election.
- Term of office.** SEC. 38. (1) The ordinary term of office of the members of the board shall be three years from the date of the election of the board, or until their successors are elected as hereinafter provided, but they shall be eligible for reelection.
- Provisions for elections.** SEC. 39. With respect to the ordinary election of the members of the board (other than the chairman) the following provisions shall apply:
- (a) The clerk shall act as returning officer, and shall do all things necessary for the proper conduct of the election.
 - (b) The first ordinary election shall be held within not less than 20 nor more than 30 days after the constitution of the district in the case of districts hereafter constituted, and before the expiry of the current ordinary term of office in the case of existing boards.
 - (c) Each subsequent ordinary election shall in every case be held within not less than 20 nor more than 30 days before the expiry of the current ordinary term of office.

(d) The governor may from time to time extend the period within which any election shall be held for such time as he thinks fit, anything hereinbefore contained to the contrary notwithstanding.

(e) The returning officer shall give 14 days' notice, in one or more newspapers circulating in the district, of the day and place of election.

(f) For the purposes of each election the registrar shall compile and supply to the returning officer a roll setting forth the name of every industrial union entitled to vote, and every such union, but no other, shall be entitled to vote accordingly.

(g) The rule shall be supplied as aforesaid not less than 14 days before the day fixed for the election, and shall be open for free public inspection at the office of the clerk during office hours, from the day on which it is received by the clerk until the day of the election.

(h) Persons shall be nominated for election in such manner as the rules of the nominating industrial union prescribe, or, if there is no such rule, nominations shall be made in writing under the seal of the union and the hand of its chairman or secretary.

(i) An industrial union not entitled to vote shall not be entitled to nominate.

(j) Each nomination shall be lodged with the returning officer not later than 5 o'clock in the afternoon of the fourth day before the day of election, and shall be accompanied by the written consent of the person nominated.

(k) Forms of nomination shall be provided by the returning officer on application to him for that purpose.

(l) The returning officer shall give notice of the names of all persons validly nominated, by affixing a list thereof on the outside of the door of his office during the three days next preceding the day of election.

(m) If it appears that the number of persons validly nominated does not exceed the number to be elected, the returning officer shall at once declare such persons elected.

(n) If the number of persons validly nominated exceeds the number to be elected, then votes shall be taken as hereinafter provided.

(o) The vote of each industrial union entitled to vote shall be signified by voting paper under the seal of the union and the hands of the chairman and secretary.

(p) The voting paper shall be lodged with or transmitted by post or otherwise to the returning officer at his office, so as to reach his office not later than 5 o'clock in the afternoon of the day of the election; and the returning officer shall record the same in such manner as he thinks fit.

(q) Every voting paper with respect to which the foregoing requirements of this section are not duly complied with shall be deemed to be informal.

(r) Each industrial union shall have as many votes as there are persons to be elected by its division.

(s) Such votes may be cumulative, and the persons, not exceeding the number to be elected, having the highest aggregate number of valid votes in each division shall be deemed elected.

(t) In any case where two or more candidates in the same division have an equal number of valid votes, the returning officer, in order to complete the election, shall give a casting vote.

(u) As soon as possible after the votes of each division of industrial unions have been recorded, the returning officer shall reject all informal votes, and ascertain what persons have been elected as before provided, and shall state the result in writing, and forthwith affix a notice thereof on the door of his office.

(v) If any question or dispute arises touching the right of any industrial union to vote, or the validity of any nomination or vote, or the mode of election or the result thereof, or any matter incidentally arising in or in respect of such election, the same may in the prescribed manner be referred to the returning officer at any time before the gazetted notice of the election of the members of the board as hereinafter provided, and the decision of the returning officer shall be final.

(w) Except as aforesaid, no such question or dispute shall be raised or entertained.

(x) In case any election is not completed on the day appointed, the returning officer may adjourn the election, or the completion thereof,

to the next or any subsequent day, and may then proceed with the election.

(y) The whole of the voting papers used at the election shall be securely kept by the returning officer during the election, and thereafter shall be put in a packet and kept until the gazetting of the notice last aforesaid, when he shall cause the whole of them to be effectually destroyed.

(z) Neither the returning officer nor any person employed by him shall at any time (except in discharge of his duty or in obedience to the process of a court of law) disclose for whom any vote has been tendered, or retain possession of or exhibit any voting paper used at the election, or give to any person any information on any of the matters herein mentioned.

(aa) If any person commits any breach of the last preceding paragraph he is liable to a fine not exceeding £20 (\$97.33), to be recovered and applied as specified in subsection 6 of section 17 hereof.

Election of chairman.

SEC. 40. (1) As soon as practicable after the election of the members of the board, other than the chairman, the clerk shall appoint a time and place for the elected members to meet for the purpose of electing a chairman, and shall give to each such member at least three days' written notice of the time and place so appointed.

(2) At such meeting the members shall, by a majority of the votes of the members present, elect some impartial person who is willing to act, not being one of their number, to be chairman of the board.

Notice of election to be gazetted.

SEC. 41. (1) As soon as practicable after the election of the chairman the clerk shall transmit to the registrar a list of the names of the respective persons elected as members and as chairman of the board, and the registrar shall cause notice thereof to be gazetted.

(2) Such notice shall be final and conclusive for all purposes, and the date of gazetting of such notice shall be deemed to be the date of the election of the board.

Resignations.

SEC. 42. Any member of the board may resign, by letter to the registrar, and the registrar shall thereupon report the matter to the clerk.

Casual vacancies.

SEC. 43. If the chairman or any member of the board: (a) dies; or (b) resigns; or (c) becomes disqualified or incapable under section 105 hereof; or (d) is proved to be guilty of inciting any industrial union or employer to commit any breach of an industrial agreement or award; or (e) is absent during four consecutive sittings of the board—his office shall thereby become vacant, and the vacancy thereby caused shall be deemed to be a casual vacancy.

Casual vacancies, how filled.

SEC. 44. (1) Every casual vacancy shall be filled by the same electing authority, and, as far as practicable, in the same manner and subject to the same provisions, as in the case of the vacating member.

(2) Upon any casual vacancy being reported to the clerk he shall take all such proceedings as may be necessary in order that the vacancy may be duly supplied by a fresh election:

Provided, That the person elected to supply the vacancy shall hold office only for the residue of the term of the vacating member.

Quorum.

SEC. 47. The presence of the chairman and of not less than one-half in number of the other members of the board, including one of each side, shall be necessary to constitute a quorum at every meeting of the board subsequent to the election of the chairman:

Provided, That in the case of the illness or absence of the chairman the other members may elect one of their own number to be chairman during such illness or absence.

Mode of voting.

SEC. 48. In all matters coming before the board the decision of the board shall be determined by a majority of the votes of the members present, exclusive of the chairman, except in the case of an equality of such votes, in which case the chairman shall have a casting vote.

Acts not to be questioned.

SEC. 49. The board may act notwithstanding any vacancy in its body, and in no case shall any act of the board be questioned on the ground of any informality in the election of a member, or on the ground that the seat of any member is vacant, or that any supposed member is incapable of being a member.

SEC. 50. In any case where the ordinary term of office expires or is likely to expire while the board is engaged in the investigation of any industrial dispute, the governor may, by notice in the Gazette, extend such term for any time not exceeding one month, in order to enable the board to dispose of such dispute, but for no other purpose:

Term of office extended, when.

Provided, That all proceedings for the election of the board's successors shall be taken in like manner in all respects as if such term were not extended, and also that any member of the board whose term is extended shall be eligible for nomination and election to the new board.

SEC. 53. Any industrial dispute may be referred for settlement to a board by application in that behalf made by any party thereto, and with respect to such application and reference the following provisions shall apply:

Reference of dispute to board.

(a) The application shall be in the prescribed form, and shall be filed in the office of the clerk for the industrial district wherein the dispute arose.

(b) If the application is made pursuant to an industrial agreement, it shall specify such agreement by reference to its date and parties, and the date and place of the filing thereof.

(c) The parties to such dispute shall in every case be trade-unions, industrial unions, or industrial associations, or employers:

But the mention of the various kinds of parties shall not be deemed to interfere with any arrangement thereof that may be necessary to insure the industrial dispute being brought in a complete shape before the board; and a party may be withdrawn, or removed, or joined at any time before the final report or recommendation of the board is made, and the board may make any recommendation or give any direction for any such purpose accordingly.

(d) As soon as practicable after the filing of the application the clerk shall lay the same before the board at a meeting thereof to be convened in the prescribed manner.

(e) An employer being a party to the reference may appear in person, or by his agent duly appointed in writing for that purpose, or by barrister or solicitor where allowed as hereinafter provided.

(f) A trade-union, industrial union, or association being a party to the reference may appear by its chairman or secretary, or by any number of persons (not exceeding three) appointed in writing by the chairman, or in such other manner as the rules prescribe, or by barrister or solicitor where allowed as hereinafter provided.

(g) Except where hereinafter specially provided, every party appearing by a representative shall be bound by the acts of such representative.

(h) No barrister or solicitor, whether acting under a power of attorney or otherwise, shall be allowed to appear or be heard before a board, or any committee thereof, unless all the parties to the reference expressly consent thereto, or unless he is a bona fide employer or worker in the industry to which the dispute relates.

SEC. 54. In every case where an industrial dispute is duly referred to a board for settlement the following provisions shall apply:

Powers and duties of board.

(a) The board shall, in such manner as it thinks fit, carefully and expeditiously inquire into the dispute, and all matters affecting the merits thereof and the right settlement thereof.

(b) For the purposes of such inquiry the board shall have all the powers of summoning witnesses, administering oaths, compelling hearing and receiving evidence, and preserving order, which are by this act conferred on the court, save and except the production of books.

(c) In the course of such inquiry the board may make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period the board thinks reasonable to allow the parties to agree upon some terms of settlement.

(d) The board may also, upon such terms as it thinks fit, refer the dispute to a committee of its members, consisting of an equal number of the representatives of employers and workers, in order that such committee may facilitate and promote an amicable settlement of the dispute.

(e) If a settlement of the dispute is arrived at by the parties it shall be set forth in an industrial agreement, which shall be duly executed by all the parties or their attorneys (but not by their representatives), and a duplicate original thereof shall be filed in the office of the clerk within such time as is named by the board in that behalf.

(f) If such industrial agreement is duly executed and filed as aforesaid, the board shall report to the clerk of awards that the dispute has been settled by industrial agreement.

(g) If such industrial agreement is not duly executed and filed as aforesaid, the board shall make such recommendation for the settlement of the dispute, according to the merits and substantial justice of the case, as the board thinks fit.

(h) The board's recommendation shall deal with each item of the dispute, and shall state in plain terms, avoiding as far as possible all technicalities, what in the board's opinion should or should not be done by the respective parties concerned.

(i) The board's recommendation shall also state the period during which the proposed settlement should continue in force, being in no case less than six months nor more than three years, and also the date from which it should commence, being not sooner than one month nor later than three months after the date of the recommendation.

(j) The board's report or recommendation shall be in writing under the hand of the chairman, and shall be delivered by him to the clerk within two months after the day on which the application for the reference was filed, or within such extended period, not exceeding one additional month, as the board thinks fit.

(k) Before entering upon the exercise of the functions of their office the members of the board, including the chairman, shall make oath or affirmation before a judge of the supreme court that they will faithfully and impartially perform the duties of their office, and also that except in the discharge of their duties they will not disclose to any person any evidence or other matter brought before the board:

Provided, That in the absence of a judge of the supreme court such oath or affirmation may be taken before a magistrate or such other person as the governor from time to time authorizes in that behalf.

Report to be
filed.

Sec. 55. Upon receipt of the board's report or recommendation the clerk shall (without fee) file the same, and allow all the parties to have free access thereto for the purpose of considering the same and taking copies thereof, and shall, upon application, supply certified copies for a prescribed fee.

Procedure if
parties accept
board's recom-
mendation.

Sec. 56. If all or any of the parties to the reference are willing to accept the board's recommendation, either as a whole or with modifications, they may, at any time before the dispute is referred to the court under the provisions in that behalf hereinafter contained, either execute and file an industrial agreement in settlement of the dispute or file in the office of the clerk a memorandum of settlement.

Memorandum
of settlement.

Sec. 57. With respect to such memorandum of settlement the following provisions shall apply:

(a) It shall be in the prescribed form, and shall be executed by all or any of the parties or their attorneys (but not by their representatives).

(b) It shall state whether the board's recommendation is accepted as a whole or with modifications, and in the latter case the modifications shall be clearly and specifically set forth therein.

(c) Upon the memorandum of settlement being duly executed and filed the board's recommendation shall, with the modifications (if any) set forth in such memorandum, operate and be enforceable in the same manner in all respects as an industrial agreement duly executed and filed by the parties.

Acceptance of
board's recom-
mendation.

Sec. 58. At any time before the board's recommendation is filed all or any of the parties to the reference may by memorandum of consent in the prescribed form, executed by themselves or their attorneys (but not by their representatives), and filed in the office of the clerk, agree to accept the recommendation of the board, and in such case the board's recommendation, when filed, shall operate and be enforceable in the same manner in all respects as an industrial agreement duly executed and filed by the parties.

SEC. 59. With reference to every industrial dispute which, having been duly referred to the board, is not settled under the provisions for settlement hereinbefore contained, the following special provisions shall apply: Reference to court if dispute not settled by board.

(a) At any time within one month after the filing of the board's recommendation any of the parties may, by application in the prescribed form filed in the office of the clerk, refer such dispute to the court for settlement, and thereupon such dispute shall be deemed to be before the court.

(b) If at the expiration of such month no such application has been duly filed, then on and from the date of such expiration the board's recommendation shall operate and be enforceable in the same manner in all respects as an industrial agreement duly executed and filed by the parties.

SEC. 60. Notwithstanding anything to the contrary in this act, either party to an industrial dispute which has been referred to a board of conciliation may, previous to the hearing of such dispute by the board, file with the clerk an application in writing requiring the dispute to be referred to the court of arbitration, and that court shall have jurisdiction to settle and determine such dispute in the same manner as if such dispute had been referred to the court under the provisions of section 59 hereof. Power to refer dispute direct to court.

SEC. 61. The board may, in any matter coming before it, state a case for the advice and opinion of the court. Board may state case.

SEC. 62. There shall be one court of arbitration (in this act called "The court") for the whole of New Zealand for the settlement of industrial disputes pursuant to this act. Court of arbitration.

SEC. 63. The court shall have a seal, which shall be judicially noticed in all courts of judicature and for all purposes. Seal.

SEC. 64. The court shall consist of three members, who shall be appointed by the governor. Of the three members of the court one shall be the judge of the court, and shall be so appointed, and the other two (hereinafter called "nominated members") shall be appointed as hereinafter provided. Constitution of court.

SEC. 65. (1) No person shall be eligible for appointment as judge of the court unless he is eligible to be a judge of the supreme court. Appointment of judge.

(2) The judge so appointed shall, as to tenure of office, salary, emoluments, and privileges (including superannuation allowance), have the same rights and be subject to the same provisions as a judge of the supreme court.

(5) This act shall be deemed to be a permanent appropriation of the salary of the judge of the court.

SEC. 66 (as amended by act 239, 1908). (1) Of the two nominated members of the court one shall be appointed on the recommendation of the industrial unions of employers and one on the recommendation of the industrial unions of workers. Appointment of members.

(2) For the purposes of the appointment of the nominated members of the court (other than the judge) the following provisions shall apply:

(a) Each industrial union may, within one month after being requested so to do by the governor, recommend to the governor the names of two persons, one to be the nominated member and one to be the acting nominated member of the court, and from the names so recommended the governor shall select four persons as follows:

One from the persons recommended by the unions of employers and one from the persons recommended by the unions of workers, and shall appoint them to be nominated members of the court; and

One from the persons recommended by the unions of employers and one from the persons recommended by the unions of workers, and appoint them to be acting nominated members of the court.

(aa) In so appointing the members and acting members of the court on the recommendation of the industrial unions, the governor shall take into account the voting power of each such union, as determined in manner following; that is to say:

(i) Every union having not more than 50 members shall be deemed to have 1 vote.

(ii) Every union having more than 50 members shall be deemed to have 1 vote for every complete 50 of its members. For the purpose of so

estimating the voting power of a union, the number of its members shall be deemed to be the number specified in the last annual list forwarded by the union to the registrar, in pursuance of section 17 hereof.

(b) The recommendation shall in each case be made in the name and under the seal of the union, by the committee of management or other governing authority thereof, however designated.

(c) If either of the divisions of unions fails or neglects to duly make any recommendation within the aforesaid period, the governor shall, as soon thereafter as may be convenient, appoint a fit person to be a nominated member or an acting nominated member of the court, as the case may be; and such person shall be deemed to be appointed on the recommendation of the said division of unions.

(d) As soon as practicable after the nominated members and acting nominated members of the court have been appointed their appointment shall be notified in the Gazette, and such notification shall be final and conclusive for all purposes.

Term of office.

(3) Every nominated member or acting nominated member of the court shall hold office for three years from the date of the gazeteting of his appointment or until the appointment of his successor and shall be eligible for reappointment.

Acting member to act, when.

SEC. 68. (1) If at any time either of the nominated members of the court is unable, by reason of illness or other cause to attend any sitting of the court on the day fixed for the same, and it is likely that he will be unable to attend any sitting of the court within seven days after the day so fixed, he may notify the clerk thereof.

(2) If at any time the clerk (whether or not he has been so notified) is satisfied that any such member is by reason of illness or other cause unable to attend any sitting of the court on the day fixed for the same, and it is likely that he will be unable to attend for seven days after the day so fixed, he shall notify the fact to the judge, who shall thereupon summon the acting nominated member appointed as aforesaid on the recommendation of the industrial unions of employers or of workers, as the case may be, to attend the sitting of the court and to act as a nominated member of the court during the absence of the nominated member who is unable to attend, and while so acting he shall have and may exercise all the powers, functions, and privileges of the nominated member for whom he is acting.

(3) On receipt by the clerk of a notice in writing, signed by the nominated member of the court, that he is able to resume the duties of his office, the acting nominated member shall cease to act as aforesaid:

Provided, That if he is then employed upon the hearing of a case he shall complete such hearing before so ceasing to act.

(4) The absence of the nominated member of the court while the acting nominated member is so acting shall not be deemed to have created a casual vacancy under section 71 hereof.

Same subject.

SEC. 69. (1) In any case where the permanent nominated member is himself a party to the dispute or proceedings, and is consequently unable to act as member, the acting nominated member may attend and act; and the provisions of the last preceding section shall, *mutatis mutandis*, apply.

(2) If in any such case as last aforesaid there is no duly appointed acting nominated member who can attend and act, the governor may, on the recommendation of the judge, appoint a fit person to attend and act for the purpose of hearing and determining the dispute or proceedings to which the permanent nominated member is a party, and the person so appointed shall be deemed to be an acting nominated member for the purpose aforesaid.

Oath of office.

SEC. 73. Before entering on the exercise of the functions of their office the nominated members of the court shall make oath or affirmation before the judge that they will faithfully and impartially perform the duties of their office, and also that, except in the discharge of their duties, they will not disclose to any person any evidence or other matter brought before the court.

Remuneration of members of the court.

SEC. 74. (1) There shall be paid to each nominated member of the court the annual sum of £500 (\$2,433.25), in addition to such traveling expenses as are prescribed by regulations.

(2) This act shall be deemed to be a permanent appropriation of the salaries of the nominated members of the court.

SEC. 75. (1) The governor may from time to time appoint some fit person to be registrar to the court, who shall be paid such salary as the governor thinks fit, and shall be subject to the control and direction of the court. Registrar to the court.

(2) The governor may also from time to time appoint such clerks and other officers of the court as he thinks necessary, and they shall hold office during pleasure, and receive such salary or other remuneration as the governor thinks fit. Officers.

SEC. 76. The court shall have jurisdiction for the settlement and determination of any industrial dispute referred to it under the provisions of this act. Jurisdiction.

SEC. 77. Forthwith after any dispute has been duly referred to the court for settlement under the provisions in that behalf hereinbefore contained, the clerk shall notify the fact to the judge. Notice to judges.

SEC. 78. Subject to provisions hereinafter contained as to the joining or striking out of parties, the parties to the proceedings before the court shall be the same as in the proceedings before the board, and the provisions hereinbefore contained as to the appearance of parties before a board shall apply to proceedings before the court. Parties to proceedings.

SEC. 79. With respect to the sittings of the court the following provisions shall apply: Sittings of court.

(a) The sittings of the court shall be held at such time and place as are from time to time fixed by the judge.

(b) The sittings may be fixed either for a particular case or generally for all cases then before the court and ripe for hearing, and it shall be the duty of the clerk to give to each member of the court, and also to all parties concerned, at least three clear days' previous notice of the time and place of each sitting.

(c) The court may be adjourned from time to time and from place to place in manner following, that is, to say:

(i) By the court or the judge at any sitting thereof, or if the judge is absent from such sitting, then by any other member present, or if no member is present, then by the clerk; and

(ii) By the judge at any time before the time fixed for the sitting, and in such case the clerk shall notify the members of the court and all parties concerned.

SEC. 80. Any party to the proceedings before the court may appear personally or by agent, or, with the consent of all the parties, by barrister or solicitor, and may produce before the court such witnesses, books, and documents as such party thinks proper. Appearance of parties.

SEC. 81. The court shall in all matters before it have full and exclusive jurisdiction to determine the same in such manner in all respects as in equity and good conscience it thinks fit. Powers of court.

SEC. 82. The following provisions shall have effect both with reference to applications and disputes pending on the coming into operation of this act and to applications hereafter filed: Provisions as to applications and disputes.

(a) The court may at or before the hearing of any dispute take steps to ascertain whether all persons who ought to be bound by its award have been cited to attend the proceedings.

(b) Whenever the court is of opinion, whether from the suggestion of parties or otherwise, that all such persons have not been cited it may direct that further parties be cited, and may postpone the hearing of the dispute until such time as it may conveniently be heard; and in such case the time for making the award under section 88 hereof shall not be deemed to commence to run until such direction has been complied with.

(c) Whenever the court is satisfied, by means of a statutory declaration of the secretary or president of any industrial union or industrial association, or of any employer, or by any other means that the court thinks sufficient, that reasonable steps have been taken by the applicant to cite all persons known to the applicant to be engaged in the industry to which the proposed award is intended to apply, but is of opinion that it is probable that further parties ought to be bound who, from their being numerous, or widely scattered, or otherwise, could not reasonably have been cited personally, the court, or, when it is not

sitting, the judge, may by order fix a day for the hearing, and give public notice thereof by advertisement or otherwise in such places and for such time or otherwise in such manner as it by such order determines.

(d) Such notice shall state the time and place of the intended sitting and the industry affected by the proposed award.

(e) The aforesaid order of the court or judge shall be conclusive evidence that it was made upon proper grounds, and a recital or statement in an award that such an order has been made shall be conclusive evidence of the fact.

(f) The cost of such notice shall be ascertained by the clerk and paid to him by the applicant before the same is incurred.

(g) Proof of the giving of such notice shall be sufficient proof of notice of the proceedings to every person, whether employer or worker, connected with or engaged in the industry to which the proceedings relate in the industrial district or the part thereof to which the award is intended to apply; and every such person, whether an original party to the proceedings or not, shall be entitled to be heard, and shall be bound by the award when made.

(h) The fixing of a date for the hearing shall not deprive the court of its power to adjourn the hearing; but any person who desires to have any adjournment notified to him may send intimation to that effect to the clerk, who shall enter his name and address in a book to be kept for that purpose, and thereafter keep him informed of any adjournment or postponement of the hearing.

(i) Any person may be made a party to an application by the applicant without an order of the court at any time not being less than seven days before the hearing of a dispute, and the court shall determine whether such person should properly be made a party to the award.

Evidence.

SEC. 83. With respect to evidence in proceedings before the court the following provisions shall apply:

(a) Formal matters which have been proved or admitted before the board need not be again proved or admitted before the court, but shall be deemed to be proved.

(b) On the application of any of the parties, and on payment of the prescribed fee, the clerk shall issue a summons to any person to appear and give evidence before the court.

(c) The summons shall be in the prescribed form, and may require such person to produce before the court any books, papers, or other documents in his possession or under his control in any way relating to the proceedings.

(d) All books, papers, and other documents produced before the court, whether produced voluntarily or pursuant to summons, may be inspected by the court, and also by such of the parties as the court allows; but the information obtained therefrom shall not be made public, and such parts of the documents as, in the opinion of the court, do not relate to the matter at issue may be sealed up.

(e) Every person who is summoned and duly attends as a witness shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil suits under "The magistrates' courts act, 1908."

(f) If any person who has been duly served with such summons, and to whom at the same time payment or tender has been made of his reasonable traveling expenses according to the aforesaid scale, fails to duly attend or to duly produce any book, paper, or document as required by his summons he commits an offense, and is liable to a fine not exceeding £20 (\$97.33) or to imprisonment for any term not exceeding one month, unless he shows that there was good and sufficient cause for such failure.

(g) For the purpose of obtaining the evidence of witnesses at a distance the court, or, whilst the court is not sitting, the judge, shall have all the powers and functions of a magistrate under "The magistrates' courts act, 1908," and the provisions of that act relative to the taking of evidence at a distance shall, *mutatis mutandis*, apply in like manner as if the court were a magistrate's court.

(h) The court may take evidence on oath, and for that purpose any member, the clerk, or any other person acting under the express or implied direction of the court, may administer an oath.

(i) On any indictment for perjury it shall be sufficient to prove that the oath was administered as aforesaid.

(j) The court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

(k) Any party to the proceedings shall be competent and may be compelled to give evidence as a witness.

(l) The court in its discretion may order that all or any part of its proceedings may be taken down in shorthand.

(m) On the hearing before the court of any industrial dispute the court may, if it thinks fit, dispense with any evidence on any matter on which all parties to the dispute have agreed in writing either as an industrial agreement or by memorandum before the board.

SEC. 84. (1) The presence of the judge and at least one other member shall be necessary to constitute a sitting of the court. Quorum.

(2) The decision of a majority of the members present at the sitting of the court, or if the members present are equally divided in opinion, then the decision of the judge, shall be the decision of the court. Decision of court.

(3) The decision of the court shall in every case be signed by the judge, and may be delivered by him, or by any other member of the court, or by the clerk.

SEC. 85. The court may refer any matters before it to a board for investigation and report, and in such case the award of the court may, if the court thinks fit, be based on the report of the board. Matters referred to board.

SEC. 86. The court may at any time dismiss any matter referred to it which it thinks frivolous or trivial, and in such case the award may be limited to an order upon the party bringing the matter before the court for payment of costs of bringing the same. Court may dismiss cases.

SEC. 87. The court in its award may order any party to pay to the other party such costs and expenses (including expenses of witnesses) as it deems reasonable, and may apportion such costs between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable: Court may award costs.

Provided, That in no case shall costs be allowed on account of barristers, solicitors, or agents.

SEC. 88. The award of the court on any reference shall be made within one month after the court began to sit for the hearing of the reference, or within such extended time as in special circumstances the court thinks fit. Award to be made, when.

SEC. 89. (1) The award shall be signed by the judge, and have the seal of the court attached thereto, and shall be deposited in the office of the clerk of the district wherein the reference arose, and be open to inspection without charge during office hours by all persons interested therein. Award open to inspection.

(2) The clerk shall upon application supply certified copies of the award for a prescribed fee.

SEC. 90 (as amended by act No. 239, 1908). (1) The award shall be framed in such manner as shall best express the decision of the court, avoiding all technicality where possible, and shall specify— Terms of award.

(a) Each original party on whom the award is binding, being in every case each trade-union, industrial union, industrial association, or employer who is party to the proceedings at the time when the award is made.

(b) The industry to which the award applies.

(c) The industrial district to which the award relates, being in every case the industrial district in which the proceedings were commenced.

(d) The currency of the award, being any specified period not exceeding three years from the date of the award:

Provided, That, notwithstanding the expiration of the currency of the award, the award shall continue in force until a new award has been duly made or an industrial agreement entered into, except where, pursuant to the provisions of section 21 or 22 hereof, the registration of an industrial union of workers bound by such award has been canceled.

(2) The award shall also state in clear terms what is or is not to be done by each party on whom the award is binding, or by the workers affected by the award, and may provide for an alternative course to be taken by any party.

(3) The award, by force of this act, shall extend to and bind as subsequent party thereto every trade-union, industrial union, industrial association, or employer who, not being an original party thereto, is at any time whilst the award is in force connected with or engaged in the industry to which the award applies within the industrial district to which the award relates.

(4) The court may in any award made by it limit the operation of such award to any city, town, or district being within or part of any industrial district.

(5) The court shall in such case have power, on the application of any trade-union, industrial union, industrial association, or employer in industrial district within which the award has effect, to extend the provisions of such award (if such award has been limited in its operation as aforesaid) to any trade-union, industrial union, industrial association, employer, or person within such industrial district.

(6) The court may, if it thinks fit, limit the operation of any award heretofore made to any particular town, city, or locality in any industrial district in which such award now has effect.

(7) The extension or limitation referred to in subsections 5 and 6 of this section shall be made upon such notice to and application of such parties as the court may in its discretion direct.

Awards made
prior to act to
continue in force.

SEC. 91. (1) Any award in force on the coming into operation of this act shall, notwithstanding the expiration of the currency of such award, continue in force until a new award has been made under this act, except where, pursuant to the provisions of section 21 or 22 hereof, the registration of an industrial union of workers bound by such award has been canceled.

(2) The court may, upon notice to any trade-union, industrial union, industrial association, or employer within the district, and engaged in the industry to which any such award applies, not being an original party thereto, extend the award and its provisions to such trade-union, industrial union, industrial association, or employer.

Power to ex-
tend and amend
an award.

SEC. 92 (as amended by act No. 239, 1908). (1) With respect to every award, whether made before or after the coming into operation of this act, the following special powers shall be exercisable by the court by order at any time during the currency of the award, that is to say:

(a) Power to amend the provisions of the award for the purpose of remedying any defect therein or of giving fuller effect thereto;

(aa) Power to amend the provisions of any award made before the commencement of this act in the flax industry, where such amendment is deemed necessary or advisable by reason of any alteration in the profits of that industry:

Provided, That no such amendment shall be made unless the court is first satisfied that a substantial number of the workers and employers engaged in that industry are desirous that the award should be reviewed by the court.

(b) Power to extend the award so as to join and bind as party thereto any specified trade-union, industrial union, industrial association, or employer in New Zealand not then bound thereby or party thereto, but connected with or engaged in the same industry as that to which the award applies:

Provided, That the court shall not act under this paragraph except where the award relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in another industrial district, and a majority of the employers engaged and of the unions of workers concerned in the trade or manufacture are bound by the award;

Provided also, That, in case of an objection being lodged to any such award by a union of employers or workers in a district other than that in which the award was made, the court shall sit for the hearing of the said objection in the district from which it comes, and may amend or extend the award as it thinks fit:

Provided further, That, notwithstanding anything contained in this paragraph, the court may extend an award to another industrial district so as to join and bind as parties to the award any specified trade-union, industrial union, industrial association, or employer where the award relates to a trade or manufacture the products of which enter into com-

petition in any market with those manufactured in the industrial district wherein the award is in force.

(2) The award, by force of this act, shall also extend to and bind every worker who is at any time whilst it is in force employed by any employer on whom the award is binding; and if such worker commits any breach of the award he shall be liable to a fine not exceeding £10 (\$48.67), to be recovered in like manner as if he were a party to the award.

Sec. 93. (1) The powers by the last preceding section conferred upon the court may be exercised on the application of any party bound by the award. Application to court.

(2) At least 30 days' notice of the application shall be served on all other parties, including, in the case of an application under paragraph (b) of that section, every trade-union, industrial union, industrial association, or employer to whom it is desired that the award should be extended.

(3) The application may be made to the court direct, without previous reference to the board.

Sec. 94. (1) Notwithstanding anything to the contrary in this act, the court shall have full power, upon being satisfied that reasonable notice has been given of any application in that behalf, to add any party or parties to any award; and thereupon any such party or parties shall be bound by the provisions thereof, subject to any condition or qualification contained in the order adding such party or parties. Court may add parties to an award.

(2) Orders adding parties heretofore made by the court shall be valid as if made in exercise of the foregoing power, whether made in pursuance of reservation in the award or not.

Sec. 95. (1) Where workers engaged upon different trades are employed in any one business of any particular employer, the court may make one award applicable to such business, and embracing, as the court thinks fit, the whole or part of the various branches constituting the business of such employer. Award applied to different trades.

(2) Before the court shall exercise such power notice shall be given to the respective industrial unions of workers engaged in any branch of such business.

Sec. 96 (as amended by act of Oct. 28, 1911). (1) In all legal and other proceedings on the award it shall be sufficient to produce the award with the seal of the court thereto, or a copy of the award certified under the hand of the clerk of awards, or any official printed copy of the award published by the labor department, and it shall not be necessary to prove any conditions precedent entitling the court to make the award. Award to be evidence.

(2) Proceedings in the court shall not be impeached or held bad for want of form, nor shall the same be removable to any court by certiorari or otherwise; and no award, order, or proceeding of the court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever. Proceedings not to be impeached.

Sec. 97 (as amended by act 239, 1908). The court in its award, or by order made on the application of any of the parties at any time whilst the award is in force, may fix and determine what shall constitute a breach of the award. Court to fix what constitutes breach of award.

Sec. 98. The court in its award, or by order made on the application of any of the parties at any time whilst the award is in force, may prescribe a minimum rate of wages or other remuneration, with special provision for a lower rate being fixed in the case of any worker who is unable to earn the prescribed minimum: Court may prescribe minimum rate of wages.

Provided, That such lower rate shall in every case be fixed by such tribunal in such manner and subject to such provisions as are specified in that behalf in the award or order.

Sec. 99. In every case where the court in its award or other order directs the payments of costs or expenses it shall fix the amount thereof, and specify the parties or persons by and to whom the same shall be paid. Costs to be fixed.

Sec. 100 (as amended by act No. 239, 1908). (1) Every inspector appointed under the factories act, 1908, shall be an inspector of awards under this act, and shall be charged with the duty of seeing that the Inspectors of awards.

provisions of any industrial agreement, or award, or order of the court are duly observed.

(2) Every inspector of mines appointed under either the coal mines act, 1908, or the mining act, 1908, shall be an inspector of awards, and shall be charged with the duty of seeing that the provisions of any such agreement, award, or order are duly observed in any coal mine or mine within his district.

(3) In the discharge of such duty an inspector of awards may require any employer or worker to produce for his examination any wages books and overtime books necessary for the purposes of this section; and, in addition, every such inspector shall have and may exercise all the powers conferred on inspectors of factories by section 6 of the factories act, 1908, and that section and sections 7 and 8 of the same act shall, *mutatis mutandis*, extend and apply to inspectors of awards.

(4) Except for the purposes of this act, and in the exercise of his functions under this act, an inspector shall not disclose to any person any information which in the exercise of such functions he acquires; and any inspector who, in contravention of this act, divulges any information shall be liable to a fine not exceeding £50 (\$243.33).

(5) A wages and overtime book shall be kept by every employer bound by an award or industrial agreement, and every such employer who fails to keep such book, or willfully makes any false entry therein, is liable to a fine not exceeding £50 (\$243.33).

(6) All fines under this section shall be recoverable summarily before a magistrate in accordance with the justices of the peace act, 1908.

Jurisdiction of
court.

SEC. 103. The court shall have full and exclusive jurisdiction to deal with all offenses under paragraph (f) of section 83, section 108, section 114, section 115, or section 120 hereof, and for that purpose the following provisions shall apply:

(a) Proceedings to recover the fine by this act imposed in respect of any such offense shall be taken in the court in a summary way under the provisions of the justices of the peace act, 1908, and those provisions shall, *mutatis mutandis*, apply in like manner as if the court were a court of justices exercising summary jurisdiction under that act:

Provided, That in the case of an offense under section 114 of this act (relating to contempt of court) the court, if it thinks fit so to do, may deal with it forthwith without the necessity of an information being taken or a summons being issued.

(b) For the purpose of enforcing any order of the court made under this section, a duplicate thereof shall by the clerk of awards be filed in the nearest office of the magistrate's court, and shall thereupon, according to its tenor, be enforced in all respects as a final judgment, conviction, or order duly made by a magistrate under the summary provisions of the justices of the peace act, 1908.

(c) The provisions of section 96 hereof shall, *mutatis mutandis*, apply to all proceedings and orders of the court under this section.

(d) All fines recovered under this section shall be paid into the public account and form part of the consolidated fund.

Court may
make rules.

SEC. 104. The court shall have power to make rules for the purpose of regulating the practice and procedure of the court, and the proceedings of parties: *Provided*, That such rules shall not conflict with regulations made under section 127 hereof.

Disqualifica-
tions of members
of board or court.

SEC. 105. The following persons shall be disqualified from being appointed, or elected, or from holding office as chairman or as member of any board, or as nominated member or acting nominated member of the court; and if so elected or appointed shall be incapable of continuing to hold the office:

(a) A bankrupt who has not obtained his final order of discharge;

(b) Any person convicted of any crime for which the punishment is imprisonment with hard labor for a term of six months or upwards; or

(c) Any person of unsound mind; or

(d) An alien.

Judge may
state case.

SEC. 106 (as amended by act No. 239, 1908). The judge of the arbitration court may in any matter before the court state a case for the opinion of the court of appeal on any question of law arising in the matter.

SEC. 107 (as amended by act 33, 1911). (1) Where an industrial union of workers is party to an industrial dispute, the jurisdiction of the board or court to deal with the dispute shall not be affected by reason merely that no member of the union is employed by any party to the dispute, or is personally concerned in the dispute. Jurisdiction not affected.

(2) An industrial dispute shall not be referred for settlement to a board by an industrial union or association, nor shall any application be made to the court by any such union or association for the enforcement of any industrial agreement or award or order of the court, unless and until the proposed reference or application has been approved by the members of the union or of each of the unions concerned in manner following; that is to say: References approved by union.

(a) By resolution passed at a special meeting of the union and confirmed by subsequent ballot of the members, a majority of the votes recorded being in favor thereof, the result of such ballot to be recorded on the minutes.

(3) Each such special meeting shall be duly constituted, convened, and held in manner provided by the rules, save that notice of the proposal to be submitted to the meeting shall be posted to all the members, and that the proposal shall be deemed to be carried if, but not unless, a majority of all the members present at the meeting of the industrial union vote in favor of it. Special meeting.

(4) A certificate under the hand of the chairman of any such special meeting shall, until the contrary is shown, be sufficient evidence as to the due constitution and holding of the meeting, the nature of the proposal submitted, and the result of the voting. Certificate of chairman evidence.

SEC. 108. In every case where an industrial dispute has been referred to the board the following special provisions shall apply: Special provisions in case of dispute.

(a) Until the dispute has been finally disposed of by the board or the court neither the parties to the dispute nor the workers affected by the dispute shall, on account of the dispute, do or be concerned in doing, directly or indirectly, anything in the nature of a strike or lockout, or of a suspension or discontinuance of employment or work, but the relationship of employer and employed shall continue uninterrupted by the dispute, or anything preliminary to the reference of the dispute and connected therewith.

(b) If default is made in faithfully observing any of the foregoing provisions of this section, every union, association, employer, worker, or person committing or concerned in committing the default shall be liable to a fine not exceeding £50 (\$243.33).

(c) The dismissal or suspension of any worker, or the discontinuance of work by any worker, pending the final disposition of an industrial dispute shall be deemed to be a default under this section, unless the party charged with such default satisfies the court that such dismissal, suspension, or discontinuance was not on account of the dispute.

SEC. 109 (as amended by act No. 239, 1908). (1) Every employer who dismisses from his employment any worker by reason merely of the fact that the worker is an officer or a member of an industrial union, or merely because such worker has acted as an accessor on a council of conciliation or has represented his union in any negotiations or conference between employers and workers, or merely because such worker is entitled to the benefit of an award, order, or agreement, is liable to a penalty not exceeding £25 (\$121.66), to be recovered at the suit of an inspector of awards in the same manner as a penalty for the breach of an award. Penalty for dismissal of workers.

(2) A worker shall be deemed to be dismissed within the meaning of this section if he is suspended for a longer period than 10 days.

(3) In every case where the worker dismissed was immediately preceding his dismissal a president, vice president, secretary, or treasurer of an industrial union, or an assessor for a council of conciliation, or represented his union in any negotiations or conference between employers and workers, it shall lie on the employer to prove that such worker was dismissed for a reason other than that he has acted in any of the said capacities.

SEC. 110. If during the currency of an award any employer, worker, industrial union, or association, or any combination of either employers or workers has taken proceedings with the intention to defeat any of the Combining to defeat award.

provisions of the award, such employer, worker, union, association, or combination, and every member thereof, respectively, shall be deemed to have committed a breach of the award, and shall be liable accordingly.

Appointment of experts.

SEC. 112. Whenever an industrial dispute involving technical questions is referred to the board or court the following special provisions shall apply:

(a) At any stage of the proceedings the board or the court may direct that two experts nominated by the parties shall sit as experts;

(b) One of the experts shall be nominated by the party, or, as the case may be, by all the parties, whose interests are with the employers; and one by the party, or, as the case may be, by all the parties, whose interests are with the workers;

(c) The experts shall be nominated in such manner as the board or court directs, or as is prescribed by regulations, but shall not be deemed to be members of the board or court for the purpose of disposing of such dispute;

(d) The powers by this section conferred upon the board and the court respectively shall, whilst the board or the court is not sitting, be exercisable by the chairman of the board and the judge of the court respectively.

Powers of board or court.

SEC. 113 (as amended by act No. 33, 1911). (1) In order to enable the board or court the more effectually to dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order—

(a) Direct parties to be joined or struck out;

(b) Amend or waive any error or defect in the proceedings;

(c) Extend the time within which anything is to be done; and

(d) Generally give such directions as are deemed necessary or expedient in the premises.

(2) The powers by this section conferred upon the board may, when the board is not sitting, be exercised by the chairman.

(3) The powers by this section conferred upon the court may, when the court is not sitting, be exercised by the judge.

Contempt of board or court.

SEC. 114. If in any proceedings before the board or court any person willfully insults any member of the board or court or the clerk, or willfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any willful contempt in the face of the board or court, it shall be lawful for any officer of the board or court, or any constable, to take the person offending into custody and remove him from the precincts of the board or court, to be detained in custody until the rising of the board or court, and the person so offending shall be liable to a fine not exceeding £10 (\$48.67).

Obstruction of board or court.

SEC. 115. Every person who prints or publishes anything calculated to obstruct or in any way interfere with or prejudicially affect any matter before the board or court is liable to a fine not exceeding £50 (\$243.33).

Power to proceed if any party fails to attend.

SEC. 116. If, without good cause shown, any party to proceedings before the board or court fails to attend or be represented, the board or court may proceed and act as fully in the matter before it as if such party had duly attended or been represented.

Proceedings to continue on change in board or court.

SEC. 117. Where any change takes place in the members constituting the board or the court, any proceeding or inquiry then in progress shall not abate or be affected, but shall continue and be dealt with by the board or the court as if no such change had taken place:

Provided, That the board or the court may require evidence to be retaken where necessary.

Proceedings not to abate by reason of death.

SEC. 118. (1) Proceedings before the board or court shall not abate by reason of the seat of any member of the board or court being vacant for any cause whatever, or of the death of any party to the proceedings, and in the latter case the legal personal representative of the deceased party shall be substituted in his stead.

Recommendation or award not void for informality.

(2) A recommendation or order of the board, or an award or order of the court, shall not be void or in any way vitiated by reason merely of any informality or error of form, or noncompliance with this act.

SEC. 119. (1) The proceedings of the board or court shall be conducted in public: Proceedings public.

Provided, That, at any stage of the proceedings before it, the board or court, of its own motion or on the application of any of the parties, may direct that the proceedings be conducted in private; and in such case all persons (other than the parties, their representatives, the officers of the board or court, and the witness under examination) shall withdraw.

(2) The board or court may sit during the day or at night, as it thinks fit.

SEC. 120. (1) Any board and the court, and, upon being authorized in writing by the board or court, any member of such board or court respectively, or any officer of such board or court, or any other person, without any other warrant than this act, may at any time between sunrise and sunset— Power of entry, etc.

(a) Enter upon any manufactory, building, workshop, factory, mine, mine workings, ship or vessel, shed, place, or premises of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place, which is made the subject of a reference to such board or court;

(b) Inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever being in such manufactory, building, workshop, factory, mine, mine workings, ship or vessel, shed, place, or premises as aforesaid;

(c) Interrogate any person or persons who may be in or upon any such manufactory, building, workshop, factory, mine, mine workings, ship or vessel, shed, place, or premises as aforesaid in respect of or in relation to any matter or thing hereinbefore mentioned.

(2) Every person who hinders or obstructs the board or court, or any member or officer thereof, respectively, or other person, in the exercise of any power conferred by this section, or who refuses to the board or court, or any member or officer thereof respectively duly authorized as aforesaid, entrance during any such time as aforesaid to any such manufactory, building, workshop, factory, mine, mine workings, ship or vessel, shed, place, or premises, or refuses to answer any questions put to him as aforesaid, is liable to a fine not exceeding £50 (\$243.33).

SEC. 121. With respect to the Government railways open for traffic the following special provisions shall apply, anything elsewhere in this act to the contrary notwithstanding: Government railways.

(a) The society of railway servants called "The Amalgamated Society of Railway Servants," and now registered under the acts of which this act is a consolidation, shall be deemed to be registered under this act;

(b) In the case of the dissolution of the said society, any reconstruction thereof, or any society of Government railway servants formed in its stead, may register under this act as an industrial union of workers;

(c) The minister of railways may from time to time enter into industrial agreements with the registered society in like manner in all respects as if the management of the Government railways were an industry, and he were the employer of all workers employed therein;

(d) If any industrial dispute arises between the minister and the society it may be referred to the court for settlement as hereinafter provided: Procedure in case of disputes.

(e) The society may, by petition filed with the clerk and setting forth the particulars of the matters in dispute, pray the court to hear and determine the same;

(f) Such petition shall be under the seal of the society and the hands of two members of the committee of management;

(g) No such petition shall be filed except pursuant to a resolution of a special meeting of the society duly called for the purpose in accordance with its rules, and with respect to such resolution and the procedure thereon section 107 shall apply;

(h) Such petition when duly filed shall be referred to the court by the clerk, and the court, if it considers the dispute sufficiently grave to call for investigation and settlement, shall notify the minister thereof, Jurisdiction of court.

and appoint a time and place at which the dispute will be investigated and determined, in like manner as in the case of a reference, and the court shall have jurisdiction to hear and determine the same accordingly and to make award thereon;

(i) In making any award under this section the court shall have regard to the schedule of classification in the Government railways act, 1908;

(j) In any proceedings before the court under this section the minister may be represented by any officer of the department whom he appoints in that behalf;

(k) All expenses incurred and moneys payable by the minister under this section shall be payable out of moneys to be appropriated by Parliament for the purpose;

(l) In no case shall the board have any jurisdiction over the society, nor shall the society or any branch thereof have any right to nominate or vote for the election of any member of the board;

(m) Except for the purposes of this section the court shall have no jurisdiction over the society;

(n) For the purposes of the appointment of members of the court the society shall be deemed to be an industrial union of workers, and may make recommendations to the governor accordingly.

Awards to continue in force.

SEC. 122. Whenever any portion of a district is severed therefrom, and either added to another district or constituted a new district or part of a new district, every award and industrial agreement in force in the district from which such portion is severed shall, so far as it is in force in such portion, remain in force therein until superseded by another award or industrial agreement.

Permit to work at less than minimum wage.

SEC. 123 (as amended by act No. 239, 1908). Where in any award provision is made for the issue of a permit to any worker to accept a wage below that prescribed for ordinary workers in the trade to which the award relates the following provisions shall apply;

(a) The application for a permit shall be in writing, signed by the applicant, and addressed to the person authorized by the award to issue the same;

(b) Such person shall fix a time and place for the hearing of such application, being not later than two days after the receipt by him of the application, and shall give notice of such time and place to the secretary of the industrial union of workers in the trade to which the award relates;

(c) Such notice shall be in writing, and may be delivered to the secretary personally or left at the registered office of the industrial union within 24 hours after the receipt of the application;

(d) Such secretary, or some other person appointed in that behalf by the union, shall be afforded an opportunity to attend the hearing so as to enable the union to express its views upon the application;

(e) No such permit shall be granted to any person who is not usually employed in the industry to which the award applies;

(f) A permit shall be valid only for the period for which it is granted.

Notifications in Gazette to be evidence.

SEC. 124. Any notification made or purporting to be made in the Gazette by or under the authority of this act may be given in evidence in all courts of justice, in all legal proceedings, and for any of the purposes of this act by the production of a copy of the Gazette.

Documents and signatures to be judicially noticed.

SEC. 125. (1) Every document bearing the seal of the court shall be received in evidence without further proof, and the signature of the judge of the court, or the chairman of the board, or the registrar, or the clerk of awards shall be judicially noticed in or before any court or person or officer acting judicially or under any power or authority contained in this act:

Provided, Such signature is attached to some award, order, certificate, or other official document made or purporting to be made under this act or any enactment mentioned in the schedule hereto.

(2) No proof shall be required of the handwriting of official position of any person acting in pursuance of this section.

Service of process on Sunday void.

SEC. 126. (1) No person shall serve or cause to be served on Sunday any order or other process of the court, and such service shall be void to all intents and purposes whatsoever.

(2) Every person who commits a breach of this section is liable to a fine not exceeding £10 (\$48.67), to be recovered in a summary way under the justices of the peace act, 1908.

(3) Nothing in this section shall be construed to annul, repeal, or in any way affect the common law, or the provisions of any statute or rule of practice or procedure, now or hereafter in force, authorizing the service of any writ, process, or warrant.

Sec. 127. (1) The governor may from time to time make regulations for any of the following purposes:

Regulations.

(a) Prescribing the forms of certificates or other instruments to be issued by the registrar, and of any certificate or other proceeding of any board or any officer thereof;

(b) Prescribing the duties of clerks of awards, and of all other officers and persons acting in the execution of this act;

(c) Providing for anything necessary to carry out the first or any subsequent election of members of boards, or on any vacancy therein or in the office of chairman of any board, including the forms of any notice, proceeding, or instrument of any kind to be used in or in respect of any such election;

(d) Providing for the mode in which recommendations by industrial unions as to the appointment of members of the court shall be made and authenticated;

(e) Prescribing any act or thing necessary to supplement or render more effectual the provisions of this act as to the conduct of proceedings before a board or the court, or the transfer of such proceedings from one of such bodies to the other;

(f) Providing generally for any other matter or thing necessary to give effect to this act or to meet any particular case;

(g) Prescribing what fees shall be paid in respect of any proceeding before a board or the court and the party by whom such fees shall be paid;

(h) Prescribing what respective fees shall be paid to the members of the board;

(i) Prescribing what respective traveling expenses shall be payable to the members of the court (including the judge) and to the members of the board; and

(j) For any other purpose for which regulations are contemplated or required in order to give full effect to this act.

(2) All such regulations shall come into force on the date of the gazetting thereof, and shall, within 14 days after such gazetting, be laid before Parliament if in session, or if not in session, then within 14 days after the beginning of the next session.

Sec. 129. Except as provided by subsection 5 of section 65 and subsection 2 of section 74 hereof, all charges and expenses incurred by the Government in connection with the administration of this act shall be defrayed out of such annual appropriations as from time to time are made for that purpose by Parliament.

Expenses of administration.

Sec. 130. No stamp duty shall be payable upon or in respect of any registration, certificate, agreement, award, statutory declaration, or instrument effected, issued, or made under this act:

Stamp duty not payable, when.

Provided, That nothing in this section shall apply to the fees of any court payable by means of stamps.

Sec. 131. Except as provided by section 121 hereof, or by the special provisions of any other act, nothing in this act shall apply to the Crown or to any department of the Government of New Zealand.

Act not to apply to Crown or Government departments.

INDUSTRIAL CONCILIATION AND ARBITRATION AMENDMENT ACT, 1908, NO. 239.

SECTION 1. This act may be cited as the industrial conciliation and arbitration amendment act, 1908, and shall be read together with and deemed to form part of the industrial conciliation and arbitration act, 1908 (hereinafter referred to as "the principal act").

Short title.

Sec. 2. This act shall come into operation on the 1st day of January, 1909.

Act in effect.

PART I.—STRIKES AND LOCKOUTS.

Definition of "strike." of SECTION 3. (1) In this act the term "strike" means the act of any number of workers who are or have been in the employment whether of the same employer or of different employers in discontinuing that employment, whether wholly or partially, or in breaking their contracts of service, or in refusing or failing after any such discontinuance to resume or return to their employment, the said discontinuance, breach, refusal, or failure being due to any combination, agreement, or common understanding, whether express or implied, made or entered into by the said workers:

(a) With intent to compel or induce any such employer to agree to terms of employment, or comply with any demands made by the said or any other workers; or

(b) With intent to cause loss or inconvenience to any such employer in the conduct of his business; or

(c) With intent to incite, aid, abet, instigate, or procure any other strike; or

(d) With intent to assist workers in the employment of any other employer to compel or induce that employer to agree to terms of employment or comply with any demands made upon him by any workers.

(2) In this act the expression "to strike" means to become a party to a strike, and the term "striker" means a party to a strike.

Definition of "lockout." of SEC. 4. In this act the term "lockout" means the act of an employer in closing his place of business, or suspending or discontinuing his business or any branch thereof:

(a) With intent to compel or induce any workers to agree to terms of employment, or comply with any demands made upon them by the said or any other employer; or

(b) With intent to cause loss or inconvenience to the workers employed by him or to any of them; or

(c) With intent to incite, aid, abet, instigate, or procure any other lockout; or

(d) With intent to assist any other employer to compel or induce any workers to agree to terms of employment or comply with any demands made by him.

Penalties. SEC. 5. (1) When a strike takes place in any industry every worker who is or becomes a party to the strike and who is at the commencement of the strike bound by any award or industrial agreement affecting that industry shall be liable to a penalty not exceeding £10 (\$48.67).

(2) When a lockout takes place in any industry every employer who is or becomes a party to the lockout, and who is at the commencement of the lockout bound by any award or industrial agreement affecting that industry, shall be liable to a penalty not exceeding £500 (\$2,433.25).

(3) No worker or employer shall be liable to more than one penalty in respect of the same strike or lockout, notwithstanding the continuance thereof.

(4) No proceedings shall be commenced or continued under this section against any worker or employer who is a party to a strike or lockout if judgment has already been obtained under the next succeeding section in respect of the same strike or lockout against any industrial union or industrial association of which the worker or employer is a member.

Offenses by persons not parties to strike or lockout. SEC. 6. (1) Every person who incites, instigates, aids, or abets an unlawful strike or lockout or the continuance of any such strike or lockout, or who incites, instigates, or assists any person to become a party to any such strike or lockout, is liable, if a worker, to a penalty not exceeding £10 (\$48.67), and if an industrial union, industrial association, trade-union, employer, or any person other than a worker, to a penalty not exceeding £200 (\$973.30).

(2) Every person who makes any gift of money or other valuable thing to or for the benefit of any person who is a party to any unlawful strike or lockout, or to or for the benefit of any industrial union, industrial association, trade-union, or other society or association of which any such person is a member, shall be deemed to have aided or abetted the strike or lockout within the meaning of this section, unless he proves that he so acted without the intent of aiding or abetting the strike or lockout.

(3) When a strike or lockout takes place, and a majority of the members of any industrial union or industrial association are at any time parties to the strike or lockout, the said union or association shall be deemed to have instigated the strike or lockout.

(4) In this section the term "unlawful strike" means a strike of any workers who are bound at the commencement of the strike by an award or industrial agreement affecting the industry in which the strike arises.

(5) In this section the term "unlawful lockout" means a lockout by any employer who is bound at the commencement of the lockout by an award or industrial agreement affecting the industry in which the lockout occurs.

SEC. 7. Every penalty hereinbefore referred to shall be recoverable at the suit of an inspector of awards in the same manner as a penalty for a breach of an award and not otherwise, and all the provisions hereinafter in this act contained with respect to the enforcement of an award shall, so far as applicable, apply accordingly. Recovery of penalties.

SEC. 9. (1) If any person employed in any of the industries to which this section applies strikes without having given to his employer, within one month before so striking, not less than 14 days' notice in writing, signed by him, of his intention to strike, or strikes before the expiry of any notice so given by him, the striker shall be liable on summary conviction before a magistrate to a fine not exceeding £25 (\$121.66). Special penalties in specified industries.

(2) If any employer engaged in any of the industries to which this section applies locks out without having given to his employees, within one month before so locking out, not less than 14 days' notice in writing of his intention to lock out, or locks out before the expiry of any notice so given by him, such employer shall be liable on summary conviction before a magistrate to a fine not exceeding £500 (\$2,433.25).

(3) This section applies to the following industries:

- (a) The manufacture or supply of coal gas;
- (b) The production or supply of electricity for light or power;
- (c) The supply of water to the inhabitants of any borough or other place;
- (d) The supply of milk for domestic consumption;
- (e) The slaughtering or supply of meat for domestic consumption;
- (f) The sale or delivery of coal, whether for domestic or industrial purposes;

(g) The working of any ferry, tramway, or railway used for the public carriage of goods or passengers.

(4) Every person who incites, instigates, aids, or abets any offense against this section, or who incites, instigates, or assists any person who has struck or locked out in breach of this section to continue to be a party to the strike or lockout shall be liable, on summary conviction before a magistrate, to a fine not exceeding in the case of a worker £25 (\$121.66), or in the case of an industrial union, industrial association, trade-union, employer, or any person other than a worker, £500 (\$2,433.25).

(5) Nothing in this section shall affect any liability under section 5 or section 6 of this act, save that when a judgment or conviction has been obtained against any person under any one of those sections no further proceedings shall be taken or continued against him under any other of those sections in respect of the same act.

SEC. 10 (as amended by act No. 33, 1911). (1) When an industrial union or industrial association of workers is convicted under section 9 of this act of having incited, instigated, aided, or abetted a strike by any of its members in breach of that section, or the continuance by any of its members of a strike commenced in breach of that section, or when judgment is obtained under section 6 of this act against an industrial union or industrial association of workers for a penalty incurred by it for inciting, instigating, aiding, or abetting a strike by any of its members, or the continuance of any such strike, or for inciting, instigating, or assisting any person to become a party to any such strike, the court in which the conviction or judgment is obtained may in the said conviction or judgment order that the registration of the union or association shall be suspended for such period as the court thinks fit, not exceeding two years. Suspension of registration of union.

(2) During any such period of suspension the said union or association shall be incapable of instituting or continuing or of being a party to any conciliation or arbitration proceedings under the principal act or this act, or of entering into any industrial agreement, or of taking or continuing any proceedings for the enforcement of an award or industrial agreement, or of making any application for the cancellation of its registration.

(3) During any such period of suspension the operation of any award or industrial agreement in force at any time during that period shall be suspended so far as the award or industrial agreement applies to persons who are members of that union or association, or who were members thereof at the time when the offense was committed in respect of which the said judgment or conviction was given or obtained, and also so far as the award or industrial agreement applies to the employers of any such persons:

Provided, That in making the order of suspension the court may limit the operation of this subsection to any industrial district or districts, or to any portion thereof.

(4) During any period of such suspension no new industrial union or industrial association of workers shall be registered in the same industrial district in respect of the same industry.

(5) The industrial union or industrial association against which any such order of suspension is made may appeal therefrom in the same manner as from the judgment or conviction in respect of which the order is made, and on any such appeal the court in which it is heard may confirm, vary, or quash the order of suspension, and may make such order as to the costs of the appeal as the said court thinks fit.

(6) The variation or quashing of an order of suspension on appeal shall take effect as from the date on which the order is so varied or quashed, and not as from the date of the order.

(7) Every judgment or conviction in respect of which any such order of suspension is made shall be subject to appeal to the court of arbitration, whether on a point of law or fact, whatever may be the amount of that judgment or of the fine imposed by that conviction.

PART II.—ENFORCEMENT OF AWARDS AND INDUSTRIAL AGREEMENTS.

Application of provisions.

SECTION 12. This part of this act applies to all awards and industrial agreements whether made before or after the commencement of this act, and to all breaches of awards or industrial agreements whether committed before or after the commencement of this act, save that all proceedings for the enforcement of any award or industrial agreement which are pending at the commencement of this act may be continued in the same manner as if this act had not been passed.

Penalties.

SEC. 13. (1) Every industrial union, industrial association, or employer who commits a breach of an award or industrial agreement shall be liable to a penalty not exceeding £100 (\$486.65) in respect of every such breach.

(2) Every worker who commits a breach of an award or industrial agreement shall be liable to a penalty not exceeding £5 (\$24.33) in respect of every such breach.

Recovery of penalties.

SEC. 14. (1) Subject to the provisions of section 21 hereof, every such penalty shall be recoverable by action in a magistrate's court, and not otherwise.

(2) Every such action may be brought in any magistrate's court in any industrial district in which the award or industrial agreement is in force or in which the cause of action or any part thereof arose, and shall be heard and determined by a magistrate only.

(3) Every such action may be brought at the suit of an inspector of awards or at the suit of any party to the award or industrial agreement.

(4) A claim for two or more penalties against the same defendant may be joined in the same action, although the aggregate amount so claimed may be in excess of the jurisdiction of the magistrate's court in an ordinary action for the recovery of money.

(5) No court fees shall be payable in respect of any such action.

(6) No industrial union or industrial association shall be capable of bringing any such action until a resolution to that effect has been

passed at a meeting of the members of the union or association, in accordance with the rules thereof.

(7) In every such action the summons shall be served on the defendant at least five clear days before the day of the hearing of the action.

SEC. 15. Unless within two clear days before the day of the hearing of any such action the defendant delivers to the plaintiff or to the clerk of the magistrate's court a notice of his intention to defend the action he shall not be entitled to defend the same except with the leave of the magistrate, and the magistrate may without hearing evidence give judgment for the plaintiff. Defendant to give notice.

SEC. 16. In any such action the magistrate may give judgment for the total amount claimed, or any greater or less amount as he thinks fit (not exceeding in respect of any one breach the maximum penalty hereinbefore prescribed), or, if he is of opinion that the breach proved against the defendant is trivial or excusable, the action may be dismissed, and in any case he may give such judgment as to costs as he thinks fit. Powers of magistrate.

SEC. 17. (1) Every penalty recovered in any such action shall be recovered by the plaintiff to the use of the Crown, and the amount thereof shall, when received by the plaintiff, be paid into the public account. Application of penalties recovered.

(2) When the plaintiff is any person other than an inspector of awards the amount of the penalty shall be paid into court or to an inspector of awards and not to the plaintiff, and shall thereupon be paid by the clerk of the court or by the said inspector into the public account.

SEC. 18. In any such action the magistrate may, if he thinks fit, before giving judgment, state a case for the opinion of the court of arbitration and may thereupon adjourn the hearing or determination of the action. Magistrate may state case.

SEC. 19 (as amended by act No. 33, 1911). (1) Any party to any such action may, if the amount of the claim is not less than £5 (\$24.33), appeal to the court of arbitration against the judgment of the magistrate in that action. Appeal to court of arbitration.

(2) Except as provided by this section, there shall be no appeal from the judgment of the magistrate in any such action.

(3) On any appeal under this section the court of arbitration shall have the same powers as the supreme court has in respect of an appeal from a magistrate's court, and the determination of the court of arbitration shall be final.

(4) In respect of any such appeal sections 153 to 158 and sections 160 and 161 of the magistrates' courts act, 1908, shall (subject to the provisions of this section) apply, and shall be read as if the references therein to the supreme court were references to the court of arbitration.

(5) No such action shall be removed into the supreme court.

SEC. 20. The judgment in any such action shall be enforceable in the same manner as a judgment for debt or damages in the magistrate's court, and in no other manner. Enforcement of judgment.

Provided, That, notwithstanding anything to the contrary in section 27 of the wages protection and contractors' liens act, 1908, where application is made in pursuance of any such judgment for the attachment of the wages of any worker an order of attachment may be made in respect of the surplus of his wages above the sum of £2 (\$9.73) a week in the case of a worker who is married or is a widower or widow with children, or above the sum of £1 (\$4.87) a week in the case of any other worker:

Provided also, That, for the purpose of any such application for attachment, all wages which may at any time thereafter become due to the judgment debtor by any employer, although they are not yet earned or owing, and whether they become due in respect of any contract of service existing at the time of the application or made at any later time, shall be deemed to be a debt accruing to the judgment debtor within the meaning of the provisions of the magistrates' courts act, 1908, relating to the attachment of debts; and on the making of any order of attachment in respect of such wages the employer shall pay into court from time to time as those wages become due and paya-

ble such sum as is sufficient to satisfy the charge imposed thereon by the order of attachment:

Provided also, That no charge upon or assignment of his wages, whenever or however made, by any worker shall have any force whatever to defeat or affect an attachment, and an order of attachment may be made and shall have effect as if no such charge or assignment existed:

Provided also, That no proceedings shall be taken under the imprisonment for debt limitation act, 1908, against any person for failing or refusing to pay any penalty or other sum of money due by him under this act.

Recovery of penalties. o f Sec. 21. (1) Notwithstanding anything hereinbefore contained, any action for the recovery of a penalty under this act may be brought by an inspector of awards in the court of arbitration instead of in a magistrate's court.

(2) The decision of the court of arbitration in any such action shall be final.

Procedure. (3) The procedure in actions so brought in the court of arbitration shall be determined by regulations to be made by the governor in council in pursuance of this act.

(4) The provisions of sections 15, 16 and 17 of this act shall, so far as applicable, extend and apply to any action so brought in the court of arbitration, and shall in respect of any such action be read as if every reference in those sections to a magistrate was a reference to the court of arbitration, and as if every reference therein to the clerk of the magistrate's court was a reference to the registrar of the court of arbitration.

(5) A certificate of the judgment of the court of arbitration in any such action, under the hand of the registrar of that court, specifying the amount payable under the judgment and the parties thereto, may be filed in any magistrate's court or magistrates' courts, and the said judgment shall thereupon be deemed to be a judgment duly recovered in an action for a penalty under this act in the court or in each of the courts in which a certificate has been so filed, and shall be enforceable in all respects accordingly.

Governor may make regulations. Sec. 22. The governor may by order in council make regulations, consistent with this act, prescribing the procedure in actions brought under the foregoing provisions of this act and in appeals to the court of arbitration.

Enforcement of certificate of court. Sec. 23. When an order for the payment of money is made by the court of arbitration, and no other provisions for the enforcement of that order are contained in this act or in the principal act, a certificate under the hand of the registrar of the said court, specifying the amount payable and the persons by and to whom it is payable, may be filed in any magistrate's court, and shall thereupon be enforceable in the like manner as a judgment given by the last-mentioned court in an action for the recovery of a debt.

Judgment recoverable from members of union or association. Sec. 24. If in any action judgment is given under the foregoing provisions of this act, whether by a magistrate's court or by the court of arbitration, against an industrial union or industrial association, and is not fully satisfied within one month thereafter, all persons who were members of the said industrial union or industrial association at the time when the offense was committed in respect of which the judgment was given shall be jointly and severally liable on the judgment in the same manner as if it had been obtained against them personally, and all proceedings in execution or otherwise in pursuance of the judgment may be taken against them or any of them accordingly, save that no person shall be liable under this section for a larger sum than £5 (\$24.33).

Unsatisfied judgment not a bar to action. Sec. 25. Judgment recovered at the suit of any person for a penalty under this act shall not, until and unless it is fully satisfied, be a bar to any other action at the suit of any other plaintiff for the recovery of the same penalty.

Action within six months. Sec. 26. No action shall be commenced for the recovery of any penalty under this act save within six months after the cause of action has arisen.

PART III.—CONCILIATION.

SECTION 27. (1) After the commencement of this act no industrial dispute shall be referred to any board of conciliation under the principal act. Passing of conciliation boards.

(2) In the case of an industrial dispute which at the commencement of this act has already been referred to a board of conciliation, further proceedings for the settlement of that dispute shall be taken in the same manner as if this act had not been passed.

(3) After the commencement of this act no person shall be elected or appointed as a member of a board of conciliation; and all persons theretofore so elected or appointed shall retire from office on the expiration of the term for which they were elected or appointed.

SEC. 28. (1) After the commencement of this act no industrial dispute shall be referred to the court until it has been first referred to a council of conciliation in accordance with the provisions hereinafter contained. Disputes referred to councils of conciliation.

(2) Every party to a dispute so referred to a council of conciliation shall be either an industrial union, an industrial association, or an employer.

SEC. 29. (1) The governor may from time to time appoint such persons as he thinks fit (not exceeding four in number) as conciliation commissioners (hereinafter referred to as "commissioners") to exercise the powers and jurisdiction hereinafter set forth. Appointment of conciliation commissioners.

(2) Every commissioner shall be appointed for a period of three years, but may be reappointed from time to time, and may at any time be removed from office by the governor.

(3) Every commissioner shall exercise his jurisdiction within such industrial district or districts as may be from time to time assigned to him by the governor by order in council.

(4) Every commissioner shall receive such salary or other remuneration as is from time to time appropriated by Parliament for that purpose.

(5) If on or before the expiry of the term of office of any commissioner he is reappointed to that office, all proceedings pending before him or before any council of conciliation of which he is a member may be continued and completed as if he had held office continuously.

(6) If from any cause any commissioner is unable to act, the governor may appoint some other person to act in his stead during the continuance of such inability, and while so acting the person so appointed shall have all the powers and jurisdiction of the commissioner in whose stead he is acting.

(7) If any commissioner dies or resigns his office, or is removed from office, or if his term of office expires without reappointment, all proceedings then pending before him or before any council of conciliation of which he is a member may be continued before his successor or before the said council, as the case may be, and for this purpose his successor shall be deemed to be a member of that council, and all the powers and jurisdiction vested in the first-mentioned commissioner as a member of that council shall vest in his successor accordingly.

(8) When in any case no commissioner is immediately available to deal with any dispute which has arisen, the governor may appoint some person to act as a commissioner for the purpose of dealing with such dispute, and while so acting the person so appointed shall have all the powers and jurisdiction of a commissioner, and any commissioner so appointed shall be paid such fees as may be fixed by regulation.

(9) No appointment made in pursuance or intended pursuance of subsection five or subsection seven of this section shall in any court or in any proceedings be questioned or invalidated on the ground that due occasion for the appointment has not arisen or has ceased.

SEC. 30. (1) Any industrial union, industrial association, or employer, being a party to an industrial dispute, may make application in the prescribed form to the commissioner exercising jurisdiction within the industrial district in which the dispute has arisen that the dispute may be heard by a council of conciliation. Application to refer dispute to council of conciliation.

(2) No such application shall be made by an industrial union or industrial association unless the proposed application has been ap-

proved by the members in manner provided by section one hundred and seven of the principal act.

(3) Two or more industrial unions, industrial associations, or employers may join in making a joint application in respect of the same dispute.

(4) Every application made under this section shall state:

(a) The name of the union, association, or employer making the application (hereinafter, together with any other unions, associations, or employers subsequently joined as applicants, termed "the applicants");

(b) The name of all industrial unions, industrial associations, and employers whom the applicants desire to be made parties to the proceedings (hereinafter, together with any other unions, associations, or employers subsequently joined as respondents, termed "the respondents");

(c) A general statement of the nature of the dispute;

(d) A detailed statement of the claims made by the applicants against the respondents in the matter of the dispute;

(e) The proposed number of persons (being either one, two, or three) whom the applicants desire to be appointed on the recommendation of the applicants as assessors to sit with the commissioner in the hearing and settlement of the dispute;

(f) The names of the persons so recommended by the applicants;

(5) Every person so recommended as an assessor must be or have been actually and bona fide engaged or employed either as an employer or as a worker in the industry, or in any one of the industries, in respect of which the dispute has arisen (whether in the same or in another industrial district):

Provided, That if in any case, by reason of the special circumstances of that case, the commissioner is of opinion that it is impracticable or inexpedient that all the assessors should be persons so qualified, he may appoint as one of their assessors, on the recommendation of the applicants, a person who is not so qualified.

(6) Any person so recommended as an assessor may be one of the parties to the dispute, or may be a member of an industrial union or industrial association which is a party to the dispute.

(7) If the commissioner to whom the application is made is of opinion that any person so recommended is not duly qualified in accordance with this act, he shall reject the recommendation, and the applicants shall then recommend some other qualified person in his place. The provisions of subsection 2 of this section shall not apply to any such substituted recommendation. The decision of the commissioner as to the qualification of any person recommended as an assessor shall be final.

(8) If and as soon as the commissioner is satisfied that the proposed number of qualified persons have been so recommended by the applicants, he shall by writing under his hand appoint those persons as assessors for the purpose of the said application.

Hearing disputes.

SEC. 31. So soon as assessors have been nominated in manner aforesaid the commissioner shall appoint a day and place for the hearing of the dispute, and shall in the prescribed form and manner cite the respondents to attend at the hearing thereof, and in the meantime to recommend qualified persons for appointment as assessors at the said hearing, equal in number to the number so appointed on the recommendation of the applicants.

Qualification and appointment of assessors.

SEC. 32 (as amended by act No. 33, 1911). (1) The foregoing provisions as to the qualification of assessors recommended by the applicants shall also apply to assessors recommended by the respondents.

(2) If the commissioner is of opinion that any person so recommended by the respondents is not duly qualified in accordance with this act he shall reject the recommendation, and shall require the respondents to recommend some other qualified person, and so also in the case of any such subsequent recommendation, and the decision of the commissioner as to the qualification of any person so recommended shall be final.

(3) If and as soon as the commissioner is satisfied that qualified persons to the required number have been recommended by the respondents

ents, he shall by writing under his hand appoint those persons as assessors for the purposes of the application.

(4) Unless the respondents recommend the required number of qualified persons as assessors at least three clear days before the day appointed for the hearing of the dispute, the commissioner shall forthwith appoint on behalf of the respondents such number of qualified persons as is necessary to supply the full number of assessors required.

(5) The recommendation of assessors by the respondents shall be in writing, signed by or on behalf of the respondents. If they can not agree in the recommendation of assessors, separate recommendations may be made by the several respondents, and in that case the commissioner may appoint as assessors such of the qualified persons so recommended as he thinks fit.

SEC. 33. (1) On the appointment of assessors in accordance with the foregoing provisions, the commissioner together with the said assessors shall be and constitute a council of conciliation (hereinafter referred to as the council), having the powers and functions hereinafter provided.

Constitution of council.

(2) The assessors shall be entitled to receive out of the consolidated fund such fees as are prescribed by regulations.

(3) The validity or regularity of the appointment of any assessor by a commissioner shall not be questioned in any court or in any proceedings.

SEC. 34. (1) If at any time before the council has completely exercised the powers vested in it by this act any assessor dies, or resigns his office, or is proved to the satisfaction of the commissioner to be unable by reason of sickness or any other cause to act as assessor, the commissioner may, on the recommendation of the applicants or respondents, as the case may be, appoint some other qualified person as an assessor in lieu of the assessor so dying or resigning his office or becoming unable to act.

Vacancy in council.

(2) If the applicants or respondents, as the case may be, can not agree on any such recommendation, they may make separate recommendations, and the commissioner may thereupon appoint as an assessor such one of the qualified persons so recommended as he thinks fit.

(3) The powers and functions of the council shall not be affected by any such vacancy in the number of assessors, and during any such vacancy the council may, so far as it thinks fit so to do, exercise all its powers and functions in the same manner as if it were fully constituted.

SEC. 35. (1) It shall be the duty of the council to endeavor to bring about a settlement of the dispute, and to this end the council shall, in such manner as it thinks fit, expeditiously and carefully inquire into the dispute and all matters affecting the merits and the right settlement thereof.

Powers and duties of council.

(2) In the course of the inquiry the council shall make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute.

(3) The procedure of the council shall in all respects be absolutely in the discretion of the council, and the council shall not be bound to proceed with the inquiry in any formal manner, or formally to sit as a tribunal, or to hear any addresses or evidence save such as the council deems necessary or desirable.

(4) The council may on the inquiry hear any evidence that it thinks fit, whether such evidence would be legally admissible in a court of law or not.

(5) The inquiry shall be either public or private, as the council thinks fit.

(6) Meetings of the council shall be held from time to time at such time and at such places within the industrial district in which the dispute has arisen as the commissioner appoints.

(7) No such meeting shall be duly constituted unless the commissioner is present thereat, but the absence of any of the assessors shall not prevent the exercise by the council of any of its powers or functions.

(8) In all matters other than the making of a recommendation for the settlement of a dispute the decision of a majority of the assessors present at a meeting of the council shall be deemed to be the decision of the council, but if the assessors present are equally divided in opinion the

commissioner shall have a casting vote, and the decision of the council shall be determined accordingly.

(9) A record of the proceedings of every council of conciliation shall be made and preserved in manner prescribed by regulations, or, in default of such regulations, in such manner as the commissioner thinks fit.

(10) The commissioner shall have the same power of summoning witnesses and of taking evidence on oath, and of requiring the production of books and papers, as if the inquiry were the hearing of a complaint heard before a justice of the peace under the justices of the peace act, 1908, and all evidence given on oath before the council shall for all purposes be deemed to have been given in a judicial proceeding before a court of competent jurisdiction.

(11) No person shall be bound at any inquiry before the council to give evidence with regard to trade secrets, profits, losses, receipts, or outgoings in his business, or with respect to his financial position, or to produce the books kept by him in connection with his business.

(12) If any person desires to give any such evidence as is mentioned in the last preceding subsection, or to produce any such books as aforesaid, he may, if the commissioner thinks fit, do so in the presence of the commissioner alone sitting without the assessors; and in such case the commissioner shall not disclose to the assessor, or to any other person, the particulars of the evidence so given or of the books so produced, but may inform the assessors whether or not, in his opinion, any claim or allegation made by the applicants or respondents in the inquiry is substantiated by the said evidence or the said books.

Parties to dispute may appear before council.

Sec. 36. (1) An employer being a party to the dispute may appear before the council in person, or by his agent duly appointed in writing in that behalf.

(2) An industrial union or industrial association being a party to a dispute may appear before the council by its chairman or secretary, or by any number of persons (not exceeding three) appointed in writing by the chairman, or appointed in such other manner as its rules prescribe.

Absence of parties.

(3) No barrister or solicitor, whether acting under a power of attorney or otherwise, shall be allowed to appear or be heard before the council.

Sec. 37. If any or all of the applicants or respondents fail or refuse to attend or to be represented at the inquiry, the council may nevertheless proceed with the inquiry in the same manner so far as practicable as if all the said parties were present or represented.

Commissioner may join or strike out parties.

Sec. 38. The commissioner may at any time before or during the inquiry make an order joining any industrial union, industrial association, or employer as an applicant or respondent, or striking out the name of any industrial union, industrial association, or employer as an applicant or respondent.

Terms of settlement to form industrial agreement.

Sec. 39. If a settlement of the dispute is arrived at by the parties in the course of the inquiry, the terms of the settlement shall be set forth as an industrial agreement, which shall be duly executed by the parties or their attorneys, and all the provisions of the principal act and of this act with respect to industrial agreements shall apply to any such agreement accordingly.

Provisional arrangement.

Sec. 40. If no settlement of the dispute is arrived at by the parties in the course of the inquiry, the council shall endeavor to induce the parties to agree to some temporary and provisional arrangement until the dispute can be determined by the court of arbitration.

Voluntary settlement.

Sec. 41. The commissioner may at any time, if he thinks fit, after application has been made to him under section 30 of this act, and whether assessors have been appointed or not, take such steps as he deems advisable, whether by way of a conference between the applicants and respondents or otherwise, with intent to procure a voluntary settlement of the dispute.

Notice of failure to settle dispute.

Sec. 42. (1) Not earlier than one month or later than two months after the date fixed in pursuance of section 30 hereof for the hearing of the dispute, the council shall, unless a settlement of the dispute has been sooner arrived at by the parties and embodied in an industrial agreement duly executed in manner aforesaid, deliver to the clerk of awards for the industrial district in which the dispute has arisen a notification under the hand of the commissioner that on settlement of the dispute has been arrived at.

(2) The notification shall be accompanied by a copy of the application made to the council by the applicants, together with a record of the proceedings of the council, every such copy and record being under the hand of the commissioner.

SEC. 43. (1) Before delivering any such notification to the clerk of awards the council may make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the council thinks fit, and may state in the recommendation whether, in the opinion of the council, the failure of the parties to arrive at a settlement was due to the unreasonableness or unfairness of any of the parties to the dispute. Recommendation of council.

(2) No such recommendation shall be made unless it is unanimously agreed to by all the assessors, and the commissioner shall have no vote in respect of the making or nature of any such recommendation.

(3) The recommendation of the council shall be signed by all the assessors, and shall be delivered to the clerk of awards under the hand of the commissioner, together with the notification.

(4) The recommendation of the council shall be published by the clerk of awards in such manner as may be prescribed.

(5) The recommendation of the council shall in no case have any binding force or effect, but shall operate merely as a suggestion for the amicable settlement of the dispute by mutual agreement, and as a public announcement of the opinion of the council as to the merits of the dispute.

SEC. 44. (1) If before the delivery of the notification of the council to the clerk of awards as aforesaid a partial settlement of the dispute is arrived at by all the parties thereto, the terms of that partial settlement may be reduced to writing, executed by all the parties thereto or their attorneys or representatives; and such writing (hereinafter termed a memorandum of partial settlement) shall be delivered by the council to the clerk of awards, together with the notification aforesaid and the recommendation (if any) made by the council. Memorandum of partial settlement.

(2) No such memorandum of partial settlement shall in itself have any binding force or effect, but the court of arbitration may, if it thinks fit, in making its award in accordance with the provisions hereinafter contained in that behalf, incorporate in the award the terms of the said memorandum, or any of those terms, without making inquiry into the matters to which those terms relate.

SEC. 45. The council may at any time state a case for the advice or opinion of the court of arbitration. Council may state case.

SEC. 47. (1) When an industrial dispute has been referred to the court in pursuance of this act the court shall have the same jurisdiction in the matter of that dispute as if the same had been referred to the court by the applicants in pursuance of the principal act after a reference to a board of conciliation, and all the provisions of the principal act shall, so far as applicable, apply accordingly. Powers of court.

(2) Subject to the provisions of the principal act as to the joinder or striking out of parties, the parties to the proceedings before the court shall be the same as in the proceedings before the council.

SEC. 49. The governor may from time to time, by order in council, make such regulations as he deems necessary for carrying this part of this act into effect. Regulations.

SEC. 50 (as amended by act No. 33, 1911). (1) The following sections of the principal act (referring to boards of conciliation) shall extend and apply to councils of conciliation under this act—namely, sections 108, 113, 114, 115, and 120. Provisions of principal act applying to councils.

(2) In those sections every reference to a board shall be read as a reference to a council of conciliation.

(3) For the purposes of those sections a dispute shall be deemed to have been referred to a council of conciliation so soon as the council is fully constituted in accordance with this act.

SEC. 61. When any payment of wages has been made to and accepted by a worker at a less rate than that which is fixed by any award or industrial agreement no action shall be brought by the worker against his employer to recover the difference between the wages so actually paid and the wages legally payable, save within three months after the day on which the wages claimed in the action became due and payable. Acceptance of wages a bar to action.

Certificate of labor department a proof of age.

Sec. 62. Where by any award or industrial agreement the age at which young persons may be employed is limited, or the wages payable to young persons of certain ages are fixed, then, in so far as the employer is concerned, it shall be sufficient proof of the age of any young person desiring employment if he produces to the employer a certificate of age granted by an official of the labor department; and in any proceedings against an employer who has acted in reliance on any such certificate for a breach of the award or industrial agreement the certificate shall be conclusive proof of the age of the young person so employed.

Copy of award to be posted.

Sec. 63. (1) In the case of any factory or shop to which any award or industrial agreement relates a printed or typewritten copy of the award or industrial agreement shall at all times be kept affixed in some conspicuous place at or near the entrance of the factory or shop, in such a position as to be easily read by the persons employed therein.

(2) For any breach of the provisions of this section the occupier of the said factory or shop shall be liable to a fine not exceeding £5 (\$24.33) on summary conviction on the information of an inspector of awards.

(3) In this section the terms "factory" and "shop" have the same meanings as in the factories act, 1908, and the shops and offices act, 1908, respectively.

Permits for under rate workers.

Sec. 65. Where in any award or industrial agreement made before the commencement of this act provision is made for the issue by the chairman of a board of conciliation or in any other manner which is rendered impracticable by the provisions of this act of permits to workers to accept a wage below that prescribed for ordinary workers, all such permits may be granted by an inspector of awards in manner provided by section 123 of the principal act.

Extension of application of industrial agreement.

Sec. 67. Whenever it is proved to the court that an industrial agreement (whether made before or after the commencement of this act) is binding on employers who employ a majority of the workers in the industry to which it relates in the industrial district in which it was made, the court may, if it thinks fit, on the application of any party to that agreement or of any person bound thereby, make an order extending the operation of that agreement to all employers who are or who at any time after the making of the said order become engaged in the said industry in the said district, and all such employers shall thereupon be deemed to be parties to the said agreement, and shall be bound thereby so long as it remains in force.

Validation of proceedings, etc.

Sec. 68. (1) If anything which is required or authorized to be done by the principal act or by this act is not done within the time limited for the doing thereof, or is done informally, the court of arbitration may, if it thinks fit in its discretion, on the application of any person interested, make an order extending the time within which the thing may be done, or validating the thing so informally done.

(2) Nothing in this section shall apply so as to authorize the court of arbitration to make any such order in respect of judicial proceedings theretofore already instituted in any court other than the court of arbitration.

Awards prevail over contracts.

Sec. 69. Every award or industrial agreement shall prevail over any contract of service or apprenticeship in force on the coming into operation of the award or industrial agreement so far as there is any inconsistency between the award or industrial agreement and the contract; and the contract shall thereafter be construed and have effect as if the same had been modified, so far as necessary, in order to conform to the award or industrial agreement.

Court may fix date of award.

Sec. 70. In making its award the court may, if in its discretion it thinks fit, direct that any provision of the award relating to the rate of wages to be paid shall have effect as from such date prior to the date of the award as the court thinks fit.

To whom awards and agreements apply.

Sec. 71. No award or industrial agreement made after the commencement of this act shall affect the employment of any worker who is employed otherwise than for the direct or indirect pecuniary gain of the employer:

Provided, That this section shall not be deemed to exempt any local authority or body corporate from the operation of any award or industrial agreement.

SEC. 72. When an industrial dispute has been referred to the court, the court may, if it considers that for any reason an award ought not to be made in the matter of that dispute, refuse to make an award therein. Court may refuse to make award.

SEC. 73. (1) Notwithstanding anything in section 21 of the principal act, the cancellation under that section of the registration of an industrial union shall not be prevented by the pendency of any conciliation or arbitration proceedings, if the application for cancellation has been made to the registrar before the commencement of the said proceedings. Cancellation of registration.

(2) The said section and this section shall extend and apply to conciliation proceedings before a council of conciliation under this act.

(3) For the purposes of this section conciliation proceedings before a council of conciliation shall be deemed to have commenced so soon as the commissioner has appointed assessors on the recommendation of the applicants, and shall be deemed to have ceased so soon as the notification of the council has been delivered to the clerk of awards, or the dispute has been settled by an industrial agreement.

(4) For the purposes of the said section and this section arbitration proceedings shall be deemed to be pending and in progress so soon as the notification of the council has been delivered to the clerk of awards.

SEC. 74. (1) The provisions of an award or industrial agreement shall continue in force until the expiration of the period for which it was made, notwithstanding that before such expiration any provision inconsistent with the award or industrial agreement is made by any act passed after the commencement of this act, unless in that act the contrary is expressly provided. Effect of subsequent legislation.

(2) On the expiration of the said period the award or industrial agreement shall, during its further subsistence, be deemed to be modified in accordance with the law then in force.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT, 1911, NO. 33.

SECTION 2. Where the registration of a union or association is cancelled for the purpose of the issue of a fresh certificate or of the union or association being registered under a new name, such cancellation shall not affect the operation of any award or industrial agreement in force to which the original union or association was a party. Cancellation of registration not to affect award, etc.

SEC. 3. Where it is proved to the court that an industrial agreement (whether made before or after the commencement of this act) is binding on employers who employ a majority of the workers in the industry to which it relates in the industrial district in which it was made, the court shall, on the application of any of the parties to the agreement, declare the same to be an award unless, in the opinion of the court, such agreement is, by reason of its provisions, against the public good or is in excess of the jurisdiction of the court. Industrial agreement may be made into award.

SEC. 4. (1) Notwithstanding anything to the contrary in the principal act, an industrial association of employers or workers may make application to the court in the first instance for an award to apply to more than one industrial district. Dispute covering more than one industrial district.

(2) The application shall contain the particulars mentioned in paragraphs (a) to (d) of subsection four of section 30 of the industrial conciliation and arbitration amendment act, 1908, and such of the provisions of that section as are applicable shall extend and apply accordingly.

(3) The application shall be filed with the clerk of awards in each of the industrial districts in which the award is intended to apply.

(4) Notice of the application shall be given in the prescribed form to the parties who it is intended shall be bound by the award.

(5) The application shall be heard at such place or places as the parties may agree on, or, in default of such agreement, as the court, on the application of any party after notice in the prescribed form to the other parties to the dispute, directs.

(6) The court may, if it thinks fit, make an award upon such application, and that award shall bind as parties all trades-unions, industrial unions, industrial associations, and employers in all or one or more of the industrial districts for which the application has been filed.

Counter proposal to be lodged.

SEC. 5. (1) Not later than three clear days before the hearing of a dispute the respondents shall lodge with the commissioner a statement in detail admitting such of the claims of the applicants as they desire to admit, or making a counter-proposal with respect to the claims of the applicants or some or one of them, and a copy of that statement shall be sent to the applicants by the commissioner.

(2) On the hearing of the dispute no counter-proposal by the respondents shall be considered other than those contained in the said statement except with the leave of the commissioner on such terms and conditions as he deems just.

(3) This section shall extend and apply with the necessary modifications to a dispute brought before the court in the first instance pursuant to section four of this act.

Provision for Dominion award in certain cases.

SEC. 6. Notwithstanding anything in section 92 of the principal act, the court may, on the application of any party to an award, extend the award so as to join and bind as parties thereto all trade-unions, industrial unions, industrial associations, and employers in New Zealand who are connected with or engaged in the same industry as that to which the award applies:

Provided, That the court shall not act under this section unless it is satisfied that the conditions of employment or of trade are such as make it equitable to do so.

Procedure where no settlement is arrived at.

SEC. 7 (as amended by act No. 7, 1913). (1) When a recommendation of a council of conciliation is filed with the clerk of awards together with the notification that no settlement has been arrived at, the clerk shall, as soon as practicable, give notice in the prescribed form to the parties to the dispute of the filing of the recommendation and of the place where it may be seen, and requiring them if they disagree with the recommendation to signify their disagreement within one month, and, if they so desire, to state reasons for such disagreement.

(2) If within the time aforesaid no notice of disagreement has been filed, the clerk shall as soon as possible thereafter give notice in the prescribed form to the parties of the fact, and the recommendation shall, as from seven days after the date of that notice, operate and be enforceable in the same manner as an industrial agreement duly executed and filed by the parties; and the clerk shall indorse the recommendation accordingly.

(3) If any party to the dispute duly signifies his disagreement with the recommendation, the dispute shall be referred by the clerk to the court for settlement, and thereupon the dispute shall be before the court, and the court may, after hearing any of the parties that have signified their disagreement, incorporate the terms of the recommendation in an award.

(4) If it appears to the court that any reason given for disagreement with the recommendation is trivial or frivolous, it may disregard such disagreement, and the parties so disagreeing shall be deemed to have concurred in the recommendation.

(5) Where a notification that no settlement has been arrived at has been delivered to the clerk of awards and the council makes no recommendation for the settlement of the dispute, the clerk shall forthwith refer the dispute to the court for settlement, and thereupon the dispute shall be deemed to be before the court.

References to registrar to the court to refer to clerk of awards.

SEC. 8. In the event of there being no registrar, or of his absence, all references in the principal act to the registrar to the court shall hereafter be deemed to be references to the clerk of awards of the industrial district to which the subject-matter relates.

Awards to be in conformity with statutory provisions.

SEC. 10. No award of the court shall contain any provision that is inconsistent with any statute which makes special provision for any of the matters before the court.

Periodical sittings of the court.

SEC. 11. A sitting of the court shall be held in the cities of Auckland, Wellington, Christchurch, and Dunedin at least once in every three months to deal with any disputes which have been referred to the court.

GREAT BRITAIN.

TRADE BOARDS ACT, 1909.

An Act to provide for the establishment of trade boards for certain trades.
[20th October, 1909.]

ESTABLISHMENT OF TRADE BOARDS FOR TRADES TO WHICH THE ACT APPLIES.

SECTION 1. (1) This act shall apply to the trades specified in the schedule to this act and to any other trades to which it has been applied by provisional order of the Board of Trade made under this section. Application of act to certain trades.

(2) The Board of Trade may make a provisional order applying this act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low, as compared with that in other employments, and that the other circumstances of the trade are such as to render the application of this act to the trade expedient.

(3) If at any time the Board of Trade consider that the conditions of employment in any trade to which this act applies have been so altered as to render the application of this act to the trade unnecessary, they may make a provisional order that this act shall cease to apply to that trade.

(4) The Board of Trade may submit to Parliament for confirmation any provisional order made by them in pursuance of this section, but no such order shall have effect unless and until it is confirmed by Parliament.

(5) If, while a bill confirming any such order is pending in either house of Parliament, a petition is presented against any order comprised therein, the bill, so far as it relates to that order, may be referred to a select committee, or, if the two houses of Parliament think fit so to order, to a joint committee of those houses, and the petitioner shall be allowed to appear and oppose as in the case of private bills.

(6) Any act confirming a provisional order made in pursuance of this section may be repealed, altered, or amended by any subsequent provisional order made by the Board of Trade and confirmed by Parliament.

SEC. 2. (1) The board of trade shall, if practicable, establish one or more trade boards constituted in accordance with regulations made under this act for any trade to which this act applies or for any branch of work in the trade. Establishment of trade boards for trades to which act applies.

Where a trade board is established under this act for any trade or branch of work in a trade which is carried on to any substantial extent in Ireland, a separate trade board shall be established for that trade or branch of work in a trade in Ireland.

(2) Where a trade board has been established for any branch of work in a trade, any reference in this act to the trade for which the board is established shall be construed as a reference to the branch of work in the trade for which the board has been established.

SEC. 3. A trade board for any trade shall consider, as occasion requires, any matter referred to them by a secretary of state, the Board of Trade, or any other Government department, with reference to the industrial conditions of the trade, and shall make a report upon the matter to the department by whom the question has been referred. General duties of trade boards.

MINIMUM RATES OF WAGES.

SEC. 4. (1) Trade boards shall, subject to the provisions of this section, fix minimum rates of wages for time work for their trades (in this act referred to as minimum time rates), and may also fix general minimum rates of wages for piecework for their trades (in this act referred to as general minimum piece rates), and those rates of wages (whether time or piece rates) may be fixed so as to apply universally to the trade, or so as to apply to any special process in the work of the trade or to any special class of workers in the trade, or to any special area. Duties and powers of trade boards with respect to minimum rates of wages.

If a trade board report to the Board of Trade that it is impracticable in any case to fix a minimum time rate in accordance with this section, the Board of Trade may so far as respects that case relieve the trade board of their duty.

(2) Before fixing any minimum time rate or general minimum piece rate, the trade board shall give notice of the rate which they propose to fix and consider any objections to the rate which may be lodged with them within three months.

(3) The trade board shall give notice of any minimum time rate or general minimum piece rate fixed by them.

(4) A trade board may, if they think it expedient, cancel or vary any minimum time rate or general minimum piece rate fixed under this act, and shall reconsider any such minimum rate if the Board of Trade direct them to do so, whether an application is made for the purpose or not:

Provided, That the provisions of this section as to notice shall apply where it is proposed to cancel or vary the minimum rate fixed under the foregoing provisions in the same manner as they apply where it is proposed to fix a minimum rate.

(5) A trade board shall on the application of any employer fix a special minimum piece rate to apply as respects the persons employed by him in cases to which a minimum time rate but no general minimum piece rate is applicable, and may as they think fit cancel or vary any such rate either on the application of the employer or after notice to the employer, such notice to be given not less than one month before cancellation or variation of any such rate.

Order giving
obligatory effect
to minimum
rates of wages.

Sec. 5. (1) Until a minimum time rate or general minimum piece rate fixed by a trade board has been made obligatory by order of the Board of Trade under this section, the operation of the rate shall be limited as in this act provided.

(2) Upon the expiration of six months from the date on which a trade board have given notice of any minimum time rate or general minimum piece rate fixed by them the Board of Trade shall make an order (in this act referred to as an obligatory order) making that minimum rate obligatory in cases in which it is applicable on all persons employing labor and on all persons employed, unless they are of opinion that the circumstances are such as to make it premature or otherwise undesirable to make an obligatory order, and in that case they shall make an order suspending the obligatory operation of the rate (in this act referred to as an order of suspension).

(3) Where an order of suspension has been made as respects any rate, the trade board may, at any time after the expiration of six months from the date of the order, apply to the Board of Trade for an obligatory order as respects that rate; and on any such application the Board of Trade shall make an obligatory order as respects that rate, unless they are of opinion that a further order of suspension is desirable, and in that case they shall make such a further order, and the provisions of this section which are applicable to the first order of suspension shall apply to any such further order.

An order of suspension as respects any rate shall have effect until an obligatory order is made by the Board of Trade under this section.

(4) The Board of Trade may, if they think fit, make an order to apply generally as respects any rates which may be fixed by any trade board constituted or about to be constituted for any trade to which this act applies, and while the order is in force any minimum time rate or general minimum piece rate shall, after the lapse of six months from the date on which the trade board have given notice of the fixing of the rate, be obligatory in the same manner as if the Board of Trade had made an order making the rate obligatory under this section, unless in any particular case the Board of Trade on the application of any person interested direct to the contrary.

The Board of Trade may revoke any such general order at any time after giving three months' notice to the trade board of their intention to revoke it.

Penalty for not
paying wages in
accordance with
minimum rate
which has been
made obligatory.

Sec. 6. (1) Where any minimum rate of wages fixed by a trade board has been made obligatory by order of the Board of Trade under this act, an employer shall, in cases to which the minimum rate is applicable, pay wages to the person employed at not less than the minimum rate clear of all deductions, and if he fails to do so shall be liable on summary

conviction in respect of each offense to a fine not exceeding £20 (\$97.33) and to a fine not exceeding £5 (\$24.33) for each day on which the offense is continued after conviction therefor.

(2) On the conviction of an employer under this section for failing to pay wages at not less than the minimum rate to a person employed, the court may by the conviction adjudge the employer convicted to pay, in addition to any fine, such sum as appears to the court to be due to the person employed on account of wages, the wages being calculated on the basis of the minimum rate, but the power to order the payment of wages under this provision shall not be in derogation of any right of the person employed to recover wages by any other proceedings.

(3) If a trade board are satisfied that any worker employed, or desiring to be employed, on time work in any branch of a trade to which a minimum time rate fixed by the trade board is applicable is affected by any infirmity or physical injury which renders him incapable of earning that minimum time rate, and are of opinion that the case can not suitably be met by employing the worker on piecework, the trade board may, if they think fit, grant to the worker, subject to such conditions, if any, as they prescribe, a permit exempting the employment of the worker from the provisions of this act rendering the minimum time rate obligatory, and, while the permit is in force, an employer shall not be liable to any penalty for paying wages to the worker at a rate less than the minimum time rate so long as any conditions prescribed by the trade board on the grant of the permit are complied with.

(4) On any prosecution of an employer under this section, it shall lie on the employer to prove by the production of proper wages sheets or other records of wages or otherwise that he has not paid, or agreed to pay, wages at less than the minimum rate.

(5) Any agreement for the payment of wages in contravention of this provision shall be void.

SEC. 7. (1) Where any minimum rate of wages has been fixed by a trade board, but is not for the time being obligatory under an order of the Board of Trade made in pursuance of this act, the minimum rate shall, unless the Board of Trade direct to the contrary in any case in which they have directed the trade board to reconsider the rate, have a limited operation as follows:

Limited operation of minimum rate which has not been made obligatory.

(a) In all cases to which the minimum rate is applicable an employer shall, in the absence of a written agreement to the contrary, pay to the person employed wages at not less than the minimum rate, and, in the absence of any such agreement, the person employed may recover wages at such a rate from the employer;

(b) Any employer may give written notice to the trade board by whom the minimum rate has been fixed that he is willing that that rate should be obligatory on him, and in that case he shall be under the same obligation to pay wages to the person employed at not less than the minimum rate, and be liable to the same fine for not doing so, as he would be if an order of the Board of Trade were in force making the rate obligatory; and

(c) No contract involving employment to which the minimum rate is applicable shall be given by a Government department or local authority to any employer unless he has given notice to the trade board in accordance with the foregoing provision:

Provided, That in case of any public emergency the Board of Trade may by order, to the extent and during the period named in the order, suspend the operation of this provision as respects contracts for any such work being done or to be done on behalf of the Crown as is specified in the order.

(2) A trade board shall keep a register of any notices given under this section:

The register shall be open to public inspection without payment of any fee, and shall be evidence of the matters stated therein:

Any copy purporting to be certified by the secretary of the trade board or any officer of the trade board authorized for the purpose to be a true copy of any entry in the register shall be admissible in evidence without further proof.

Provision for cases of persons employed by piecework where a minimum time rate but no general minimum piece rate has been fixed.

SEC. 8. An employer shall, in cases where persons are employed on piecework and a minimum time rate but no general minimum piece rate has been fixed, be deemed to pay wages at less than the minimum rate—

(a) In cases where a special minimum piece rate has been fixed under the provisions of this act for persons employed by the employer, if the rate of wages paid is less than that special minimum piece rate; and

(b) In cases where a special minimum piece rate has not been so fixed, unless he shows that the piece rate of wages paid would yield, in the circumstances of the case, to an ordinary worker at least the same amount of money as the minimum time rate.

Prevention of evasion.

SEC. 9. Any shopkeeper, dealer, or trader, who by way of trade makes any arrangement express or implied with any worker in pursuance of which the worker performs any work for which a minimum rate of wages has been fixed under this act, shall be deemed for the purposes of this act to be the employer of the worker, and the net remuneration obtainable by the worker in respect of the work after allowing for his necessary expenditure in connection with the work shall be deemed to be wages.

Consideration by trade board of complaints as to infraction of minimum rates.

SEC. 10. (1) Any worker or any person authorized by a worker may complain to the trade board that the wages paid to the worker by any employer in any case to which any minimum rate fixed by the trade board is applicable are at a rate less than the minimum rate, and the trade board shall consider the matter and may, if they think fit, take any proceedings under this act on behalf of the worker.

(2) Before taking any proceedings under this act on behalf of the worker, a trade board may, and on the first occasion on which proceedings are contemplated by the trade board against an employer they shall take reasonable steps to bring the case to the notice of the employer, with a view to the settlement of the case without recourse to proceedings.

CONSTITUTION, PROCEEDINGS, ETC., OF TRADE BOARDS.

Constitution and proceedings of trade boards.

SEC. 11. (1) The Board of Trade may make regulations with respect to the constitution of trade boards which shall consist of members representing employers and members representing workers (in this act referred to as representative members) in equal proportions and of the appointed members. Any such regulations may be made so as to apply generally to the constitution of all trade boards, or specially to the constitution of any particular trade board or any particular class of trade boards.

(2) Women shall be eligible as members of trade boards as well as men.

(3) The representative members shall be elected or nominated, or partly elected and partly nominated as may be provided by the regulations, and in framing the regulations the representation of home workers on trade boards shall be provided for in all trades in which a considerable proportion of home workers are engaged.

(4) The chairman of a trade board shall be such one of the members as the Board of Trade may appoint, and the secretary of the trade board shall be appointed by the Board of Trade.

(5) The proceedings of a trade board shall not be invalidated by any vacancy in their number, or by any defect in the appointment, election, or nomination of any member.

(6) In order to constitute a meeting of a trade board, at least one-third of the whole number of the representative members and at least one appointed member must be present.

(7) The Board of Trade may make regulations with respect to the proceedings and meetings of trade boards, including the method of voting; but subject to the provisions of this act and to any regulations so made trade boards may regulate their proceedings in such manner as they think fit.

Establishment of district trade committees.

SEC. 12. (1) A trade board may establish district trade committees consisting partly of members of the trade board and partly of persons not being members of the trade board but representing employers or

workers engaged in the trade and constituted in accordance with regulations made for the purpose by the Board of Trade and acting for such area as the trade board may determine.

(2) Provisions shall be made by the regulations for at least one appointed member acting as a member of each district trade committee, and for the equal representation of local employers and local workers on the committee, and for the representation of home workers thereon in the case of any trade in which a considerable proportion of home workers are engaged in the district, and also for the appointment of a standing subcommittee to consider applications for special minimum piece rates and complaints made to the trade board under this act, and for the reference of any applications or complaints to that subcommittee.

(3) A trade board may refer to a district trade committee for their report and recommendations any matter which they think it expedient so to refer, and may also, if they think fit, delegate to a district trade committee any of their powers and duties under this act, other than their power and duty to fix a minimum time rate or general minimum piece rate.

(4) Where a district trade committee has been established for any area, it shall be the duty of the committee to recommend to the trade board minimum time rates and, so far as they think fit, general minimum piece rates, applicable to the trade in that area, and no such minimum rate of wages fixed under this act and no variation or cancellation of such a rate shall have effect within that area unless either the rate or the variation or cancellation thereof, as the case may be, has been recommended by the district trade committee, or an opportunity has been given to the committee to report thereon to the trade board, and the trade board have considered the report (if any) made by the committee.

SEC. 13. (1) The Board of Trade may appoint such number of persons (including women) as they think fit to be appointed members of trade boards. Appointed members of trade boards.

(2) Such of the appointed members of trade boards shall act on each trade board or district trade committee as may be directed by the Board of Trade, and, in the case of a trade board for a trade in which women are largely employed, at least one of the appointed members acting shall be a woman:

Provided, That the number of appointed members acting on the same trade board, or the same district trade committee, at the same time, shall be less than half the total number of members representing employers and members representing workers.

APPOINTMENT OF OFFICERS AND OTHER PROVISIONS FOR ENFORCING ACT.

SEC. 14. (1) The Board of Trade may appoint such officers as they think necessary for the purpose of investigating any complaints and otherwise securing the proper observance of this act, and any officers so appointed shall act under the directions of the Board of Trade, or, if the Board of Trade so determine, under the directions of any trade board. Appointment of officers.

(2) The Board of Trade may also, in lieu of or in addition to appointing any officers under the provisions of this section, if they think fit, arrange with any other Government department for assistance being given in carrying this act into effect, either generally or in any special cases, by officers of that department whose duties bring them into relation with any trade to which this act applies.

SEC. 15. (1) Any officer appointed by the Board of Trade under this act, and any officer of any Government department for the time being assisting in carrying this act into effect, shall have power for the performance of his duties— Powers of officers.

(a) To require the production of wages sheets or other record of wages by an employer, and records of payments made to outworkers by persons giving out work, and to inspect and examine the same and copy any material part thereof;

(b) To require any person giving out work and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or

from whom the work is received, as the case may be, and with respect to the payments to be made for the work;

(c) At all reasonable times to enter any factory or workshop and any place used for giving out work to outworkers; and

(d) To inspect and copy any material part of any list of outworkers kept by an employer or person giving out work to outworkers.

(2) If any person fails to furnish the means required by an officer as necessary for any entry or inspection or the exercise of his powers under this section, or if any person hinders or molests any officer in the exercise of the powers given by this section, or refuses to produce any document or give any information which any officer requires him to produce or give under the powers given by this section, that person shall be liable on summary conviction in respect of each offense to a fine not exceeding £5 (\$24.33); and, if any person produces any wages sheet, or record of wages, or record of payments, or any list of outworkers to any officer acting in the exercise of the powers given by this section, knowing the same to be false, or furnishes any information to any such officer knowing the same to be false, he shall be liable, on summary conviction, to a fine not exceeding £20 (\$97.33), or to imprisonment for a term not exceeding three months, with or without hard labor.

Officers to produce certificates when required.

Sec. 16. Every officer appointed by the Board of Trade under this act, and every officer of any Government department for the time being assisting in carrying this act into effect, shall be furnished by the board or department with a certificate of his appointment, and when acting under any or exercising any power conferred upon him by this act shall, if so required, produce the said certificate to any person or persons affected.

Power to take and conduct proceedings.

Sec. 17. (1) Any officer appointed by the Board of Trade under this act, and any officer of any Government department for the time being assisting in carrying this act into effect, shall have power in pursuance of any special or general directions of the Board of Trade to take proceedings under this act, and a trade board may also take any such proceedings in the name of any officer appointed by the Board of Trade for the time being acting under the directions of the trade board in pursuance of this act, or in the name of their secretary or any of their officers authorized by them.

(2) Any officer appointed by the Board of Trade under this act, or any officer of any Government department for the time being assisting in carrying this act into effect, and the secretary of a trade board, or any officer of a trade board authorized for the purpose, may, although not a counsel or solicitor or law agent, prosecute or conduct before a court of summary jurisdiction any proceedings arising under this act.

SUPPLEMENTAL.

Regulations as to mode of giving notice.

Sec. 18. (1) The Board of Trade shall make regulations as to the notice to be given of any matter under this act, with a view to bringing the matter of which notice is to be given so far as practicable to the knowledge of persons affected.

(2) Every occupier of a factory or workshop, or of any place used for giving out work to outworkers, shall, in manner directed by regulations under this section, fix any notices in his factory or workshop or the place used for giving out work to outworkers which he may be required to fix by the regulations, and shall give notice in any other manner, if required by the regulations, to the persons employed by him of any matter of which he is required to give notice under the regulations:

If the occupier of a factory or workshop, or of any place used for giving out work to outworkers, fails to comply with this provision, he shall be liable on summary conviction in respect of each offense to a fine not exceeding 40s. (\$9.73).

Regulations to be laid before Parliament.

Sec. 19. Regulations made under this act shall be laid as soon as possible before both houses of Parliament, and, if either house within the next 40 days after the regulations have been laid before that house resolve that all or any of the regulations ought to be annulled, the regulations shall, after the date of the resolution, be of no effect, without prejudice to the validity of anything done in the meantime thereunder or to the making of any new regulations. If one or more of a set of regula-

tions are annulled, the Board of Trade may, if they think fit, withdraw the whole set.

SEC. 20. (1) His Majesty may, by order in council, direct that any powers to be exercised or duties to be performed by the Board of Trade under this act shall be exercised or performed generally, or in any special cases or class of cases, by a secretary of state, and, while any such order is in force, this act shall apply as if, so far as is necessary to give effect to the order, a secretary of state were substituted for the Board of trade.

Interchange of powers between Government departments.

(2) Any order in council under this section may be varied or revoked by any subsequent order in council.

SEC. 21. There shall be paid out of moneys provided by Parliament—

(1) Any expenses, up to an amount sanctioned by the treasury, which may be incurred with the authority or sanction of the Board of Trade, by trade boards or their committees in carrying into effect this act; and

Expenses of carrying act into effect.

(2) To appointed members and secretaries of trade boards and to officers appointed by the Board of Trade under this act such remuneration and expenses as may be sanctioned by the treasury; and

(3) To representative members of trade boards and members (other than appointed members) of district trade committees any expenses (including compensation for loss of time), up to an amount sanctioned by the treasury, which may be incurred by them in the performance of their duties as such members; and

(4) Any expenses, up to an amount sanctioned by the treasury, which may be incurred by the Board of Trade in making inquiries, or procuring information, or taking any preliminary steps with respect to the application of this act to any trade to which the act does not apply, including the expenses of obtaining a provisional order, or promoting any bill to confirm any provisional order made under, or in pursuance of, the provisions of this act.

SEC. 22. (1) This act may be cited as the trade boards act, 1909.

Short title and commencement.

(2) This act shall come into operation on the 1st day of January, 1910.

SCHEDULE.

TRADES TO WHICH THE ACT APPLIES WITHOUT PROVISIONAL ORDER.

1. Ready-made and wholesale bespoke tailoring and any other branch of tailoring in which the Board of Trade consider that the system of manufacture is generally similar to that prevailing in the wholesale trade.

2. The making of boxes or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.

3. Machine-made lace and net finishing and mending or darning operations of lace curtain finishing.

4. Hammered and dollied or tommied chain making.

REGULATIONS.

1. A trade board shall be established for those branches of the ready-made and wholesale bespoke tailoring trade in Great Britain which are engaged in making garments to be worn by male persons.

2. The board shall consist of not less than 29 and not more than 37 persons, namely, 3 or 5 appointed members, and members representing employers and workers, respectively, in equal proportions. The chairman and deputy chairman shall be such of the members as may be nominated by the Board of Trade.

3. Ten members, representing employers in the above branches of trade who are occupiers of factories within the meaning of the factory and workshop acts and are not habitually engaged in subcontracting, shall be chosen by the Board of Trade as follows:

Two members after considering names supplied by such employers in Scotland.

Two members after considering names supplied by such employers in the counties of Northumberland, Durham, and Yorkshire.

One member after considering names supplied by such employers in the counties of Cumberland, Westmorland, Lancashire, Cheshire, Flint, Denbigh, Carnarvon, Anglesea, Merioneth, and Montgomery.

One member after considering names supplied by such employers in the counties of Derby, Stafford, Shropshire, Hereford, Worcester, Warwick, Oxford, Northampton,¹ Rutland, Leicester, and Nottingham.

One member after considering names supplied by such employers in the counties of Lincoln, Huntingdon,² Cambridge, Norfolk, Suffolk, Essex (outside the metropolitan police boundary).

Two members after considering names supplied by such employers in London and the counties of Essex (within the metropolitan police boundary), Middlesex, Hertford, Bedford, Buckingham, Surrey, Kent, and Sussex.

One member after considering names supplied by such employers in the counties of Berkshire, Hampshire, Dorset, Wiltshire, Gloucester, Somerset, Devon, Cornwall, Monmouth, Glamorgan, Brecknock, Radnor, Cardigan, Carmarthen, and Pembroke.

A casual vacancy among members representing such employers shall be filled in the same manner.

Three members representing employers in the above trade (other than those employers who are occupiers of factories within the meaning of the factory and workshop acts and are not habitually engaged in sub-contracting) shall be chosen by the Board of Trade after considering names supplied by such employers. A casual vacancy among members representing such employers shall be filled in the same manner.

4. Thirteen members representing the workers shall be chosen by the Board of Trade after considering names supplied by workers in the above trade, due regard being paid to the proper representation of home workers. A casual vacancy among members representing workers shall be filled in the same manner.

5. The Board of Trade may, after giving an opportunity to the trade board to be heard, extend the functions of the trade board by bringing within their scope any other branch of tailoring covered by paragraph (1) of the schedule to the trade boards act. The Board of Trade shall give three months' notice of their intention to bring any such branch of work within the scope of the trade board by advertisement in the London Gazette and Edinburgh Gazette, and so far as practicable in trade papers.

6. The Board of Trade may, if they think it necessary in order to secure proper representation of any classes of employers or workers, after giving an opportunity to the trade board to be heard, nominate additional representative members on the trade board, and such representative members may be nominated either for the whole term of office of the board or for any part thereof. The number of such additional representative members shall not at any time exceed six, three on each side.

7. The term of office of the first trade board shall be three years.

8. Any representative of employers who ceases to be an employer and becomes a worker at the trade shall vacate his seat. Any representative of workers who becomes an employer in the trade shall also vacate his seat. The question of fact shall in each case be determined by the chairman.

9. Every member of the board shall have one vote: *Provided*, That the chairman, or in his absence the deputy chairman, may, if he think it desirable, and shall at the request of more than half of the members representing employers or workers, take a vote of the representative members by sides, and in such a case the vote of the majority of members of either side present and voting shall be the vote of that side. In such a division the appointed members shall not vote, but in the event of the division resulting in a disagreement the question shall be decided by a majority vote of the appointed members.

10. Any representative of employers or workers who fails, without reasonable cause, to attend one-half of the total number of meetings in one year shall vacate his seat, but shall be eligible to be nominated again.

¹ Excluding the city of Peterborough.

² Including the city of Peterborough.

11. Any question upon the construction or interpretation of these regulations shall, in the event of dispute, be referred to the Board of Trade for decision.

July 25, 1910.

TRADE BOARDS PROVISIONAL ORDERS CONFIRMATION ACT, 1913.

CHAPTER CLXII.—*An Act to confirm certain provisional orders made by the Board of Trade under the trade boards act 1909 (Aug. 15, 1913).*

Whereas the Board of Trade have made the provisional orders set forth in the schedule hereto under the provisions of the trade boards act 1909: and

Whereas it is requisite that the said orders should be confirmed by Parliament:

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:

1. The orders set out in the schedule hereto shall be and the same are hereby confirmed and all the provisions thereof shall have full validity and force.

2. This act may be cited as the trade boards provisional orders confirmation act 1913.

SCHEDULE.

ORDERS CONFIRMED.

I.

Provisional order made in pursuance of section 1 of the trade boards act, 1909, with respect to the sugar confectionery and food-preserving trade.

Whereas the trade boards act 1909 applies to the trades specified in the schedule to that act and to any other trades to which it has been applied by provisional order of the Board of Trade made under section 1 of that act and the Board of Trade have power under that section to make a provisional order applying that act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments and that the other circumstances of the trade are such as to render the application of that act to the trade expedient; and

Whereas the trade boards act does not apply to the trade specified in the appendix to this order and the board as respects that trade are satisfied as aforesaid:

Now therefore we the Board of Trade in pursuance of the powers given to us by section 1 of the trade boards act 1909 and by any other statute in that behalf do hereby order that from and after the date of the act of Parliament confirming this order the following provisions shall have effect (that is to say):

ARTICLE 1. The trade boards act 1909 shall apply to the trade specified in the appendix to this order.

ART. 2. This order may be cited as the trade boards (sugar confectionery and food preserving) order 1913.

APPENDIX.

Trade.

Sugar confectionery and food preserving (that is to say) the making of sugar confectionery cocoa chocolate jam marmalade preserved fruits fruit and table jellies meat extracts meat essences sauces and pickles the preparation of meat poultry game fish vegetables and

fruit for sale in a preserved state in tins pots bottles and similar receptacles the processes of wrapping filling packing and labeling in respect of articles so made or prepared.

II.

Provisional order made in pursuance of section 1 of the trade boards act, 1909, with respect to the shirt-making trade.

Whereas the trade boards act 1909 applies to the trades specified in the schedule to that act and to any other trades to which it has been applied by provisional order of the Board of Trade made under section 1 of that act and the Board of Trade have power under that section to make a provisional order applying that act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments and that the other circumstances of the trade are such as to render the application of that act to the trade expedient: and

Whereas the trade boards act does not apply to the trade specified in the appendix to this order and the board as respects that trade are satisfied as aforesaid:

Now therefore we the Board of Trade in pursuance of the powers given to us by section 1 of the trade boards act 1909 and by any other statute in that behalf do hereby order that from and after the date of the act of Parliament confirming this order the following provisions shall have effect (that is to say):

ARTICLE 1. The trade boards act 1909 shall apply to the trade specified in the appendix to this order.

ART. 2. This order may be cited as the trade boards (shirt-making) order 1913.

APPENDIX.

Trade.

Shirt making (that is to say) the making from textile fabrics of shirts pajamas aprons and other washable clothing worn by male persons excluding articles the making of which is included in paragraph 1 of the schedule to the trade boards act 1909 and excluding articles which are knitted or are made from knitted fabrics.

III.

Provisional order made in pursuance of section 1 of the trade boards act 1909 with respect to the hollow ware making trade.

Whereas the trade boards act 1909 applies to the trades specified in the schedule to that act and to any other trades to which it has been applied by provisional order of the Board of Trade made under section 1 of that act and the Board of Trade have power under that section to make a provisional order applying that act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments and that the other circumstances of the trade are such as to render the application of that act to the trade expedient:

And whereas the trade boards act does not apply to the trade specified in the appendix to this order and the board as respects that trade are satisfied as aforesaid:

Now therefore we the Board of Trade in pursuance of the powers given to us by section 1 of the trade boards act 1909 and by any other statute in that behalf do hereby order that from and after the date of the act of Parliament confirming this order the following provisions shall have effect (this is to say):

ARTICLE 1. The trade boards act 1909 shall apply to the trade specified in the appendix to this order.

ART. 2. This order may be cited as the trade boards (hollow ware) order 1913.

APPENDIX.

Trade.

Hollow ware making that is to say the making of hollow ware including boxes and canisters from sheet iron sheet steel or tin-plate including the processes of galvanizing tinning enameling painting, japanning lacquering and varnishing.

IV.

Provisional order made in pursuance of section 1 of the trade boards act 1909 with respect to the linen and cotton embroidery trade.

Whereas the trade boards act 1909 applies to the trades specified in the schedule to that act and to any other trades to which it has been applied by provisional order of the Board of Trade made under section 1 of that act and the Board of Trade have power under that section to make a provisional order applying that act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low as compared with that in other employments and that the other circumstances of the trade are such as to render the application of that act to the trade expedient: and

Whereas the trade boards act does not apply to the trade specified in the appendix to this order and the board as respects that trade are satisfied as aforesaid:

Now therefore we the Board of Trade in pursuance of the powers given to us by section 1 of the trade boards act 1909 and by any other statute in that behalf do hereby order that from and after the date of the act of parliament confirming this order the following provisions shall have effect (that is to say):

ARTICLE 1. The trade boards act 1909 shall apply to the trade specified in the appendix to this order.

ART. 2. This order may be cited as the trade boards (linen and cotton embroidery) order 1913.

APPENDIX.

Trade.

Linen and cotton embroidery (that is to say) those branches of the trade of making up articles of linen or cotton or mixed linen and cotton, which are engaged in the processes of hand embroidery drawn-thread work thread drawing thread clipping top-sewing scalloping nickeling and paring.

COAL MINES (MINIMUM WAGE) ACT, 1912.

CHAPTER 2.—*An Act to provide a minimum wage in the case of workmen employed underground in coal mines (including mines of stratified ironstone), and for purposes incidental thereto.*

SECTION 1. (1) It shall be an implied term of every contract for the employment of a workman underground in a coal mine that the employer shall pay to that workman wages at not less than the minimum rate settled under this act and applicable to that workman, unless it is certified in manner provided by the district rules that the workman is a person excluded under the district rules from the operation of this provision, or that the workman has forfeited the right to wages at the minimum rate by reason of his failure to comply with the conditions with respect to the regularity or efficiency of the work to be performed by workmen laid down by those rules; and any agreement for the payment of wages in so far as it is in contravention of this provision shall be void.

Minimum wage for workmen employed underground in coal mines.

For the purposes of this act, the expression "district rules" means rules made under the powers given by this act by the joint district board.

(2) The district rules shall lay down conditions, as respects the district to which they apply, with respect to the exclusion from the right to wages at the minimum rate of aged workmen and infirm workmen (including workmen partially disabled by illness or accident), and shall lay down conditions with respect to the regularity and efficiency of the work to be performed by the workmen, and with respect to the time for which a workman is to be paid in the event of any interruption of work due to an emergency, and shall provide that a workman shall forfeit the right to wages at the minimum rate if he does not comply with conditions as to regularity and efficiency of work, except in cases where the failure to comply with the conditions is due to some cause over which he has no control.

The district rules shall also make provision with respect to the persons by whom and the mode in which any question, whether any workman in the district is a workman to whom the minimum rate of wages is applicable, or whether a workman has complied with the conditions laid down by the rules, or whether a workman who has not complied with the conditions laid down by the rules has forfeited his right to wages at the minimum rate, is to be decided, and for a certificate being given of any such decision for the purposes of this section.

(3) The provisions of this section as to payment of wages at a minimum rate shall operate as from the date of the passing of this act, although a minimum rate of wages may not have been settled, and any sum which would have been payable under this section to a workman on account of wages if a minimum rate had been settled may be recovered by the workman from his employer at any time after the rate is settled.

Settlement of
minimum rates
of wages and dis-
trict rules.

SEC. 2. (1) Minimum rates of wages and district rules for the purposes of this act shall be settled separately for each of the districts named in the schedule to this act by a body of persons recognized by the Board of Trade as the joint district board for that district.

Nothing in this act shall prejudice the operation of any agreement entered into or custom existing before the passing of this act for the payment of wages at a rate higher than the minimum rate settled under this act, and in settling any minimum rate of wages the joint district board shall have regard to the average daily rate of wages paid to the workmen of the class for which the minimum rate is to be settled.

(2) The Board of Trade may recognize as a joint district board for any district any body of persons, whether existing at the time of the passing of this act or constituted for the purposes of this act, which in the opinion of the Board of Trade fairly and adequately represents the workmen in coal mines in the district and the employers of those workmen, and the chairman of which is an independent person appointed by agreement between the persons representing the workmen and employers respectively on the body, or in default of agreement by the Board of Trade.

The Board of Trade may, as a condition of recognizing as a joint district board for the purposes of this act any body the rules of which do not provide for securing equality of voting power between the members representing workmen and the members representing employers and for giving the chairman a casting vote in case of difference between the two classes of members, require that body to adopt any such rule as the Board of Trade may approve for the purpose, and any rule so adopted shall be deemed to be a rule governing the procedure of the body for the purposes of this act.

(3) The joint district board of a district shall settle general minimum rates of wages and general district rules for their district (in this act referred to as general district minimum rates and general district rules), and the general district minimum rates and general district rules shall be the rates and rules applicable throughout the whole of the district to all coal mines in the district and to all workmen or classes of workmen employed underground in those mines, other than mines to which and workmen to whom a special minimum rate or special district rules settled under the provisions of this act is or are applicable,

or mines to which and workmen to whom the joint district board declare that the general district rates and general district rules shall not be applicable pending the decision of the question whether a special district rate or special district rules ought to be settled in their case.

(4) The joint district board of any district may, if it is shown to them that any general district minimum rate or general district rules are not applicable in the case of any group or class of coal mines within the district, owing to the special circumstances of the group or class of mines, settle a special minimum rate (either higher or lower than the general district rate) or special district rules (either more or less stringent than the general district rules) for that group or class of mines, and any such special rate or special rules shall be the rate or rules applicable to that group or class of mines instead of the general district minimum rate or general district rules.

(5) For the purpose of settling minimum rates of wage, the joint district board may subdivide their district into two parts or, if the members of the joint district board representing the workmen and the members representing the employers agree, into more than two parts, and in that case each part of the district as so subdivided shall, for the purpose of the minimum rate, be treated as the district.

(6) For the purpose of settling district rules, any joint district boards may agree that their districts shall be treated as one district, and in that case those districts shall be treated for that purpose as one combined district, with a combined district committee appointed as may be agreed between the joint district boards concerned, and the chairman of such one of the districts forming the combination as may be agreed upon between the joint district boards concerned, or, in default of agreement, determined by the Board of Trade, shall be the chairman of the combined district committee.

SEC. 3. (1) Any minimum rate of wages or district rules settled under this act shall remain in force until varied in accordance with the provisions of this act.

Revision of minimum rates of wages and district rules.

(2) The joint district board of a district shall have power to vary any minimum rate of wages or district rules for the time being in force in their district—(a) at any time by agreement between the members of the joint district board representing the workmen and the members representing the employers; and (b) after one year has elapsed since the rate or rules were last settled or varied, on an application made (with three months' notice given after the expiration of the year) by any workmen or employers, which appears to the joint district board to represent any considerable body of opinion amongst either the workmen or the employers concerned; and the provisions of this act as to the settlement of minimum rates of wages or district rules shall, so far as applicable, apply to the variation of any such rates or rules.

SEC. 4. (1) If within two weeks after the passing of this act a joint district board has not been recognised by the Board of Trade for any district, or if at any time after the passing of this act any occasion arises for the exercise or performance in any district of any power or duty under this act by the joint district board, and there is no joint district board for the district, the Board of Trade may, either forthwith or after such interval as may seem to them necessary or expedient, appoint such person as they think fit to act in the place of the joint district board, and, while that appointment continues, this act shall be construed, so far as respects that district, as if the person so appointed were substituted for the joint district board.

Provision for bringing act into operation, etc.

The Board of Trade in any such case where it appears to them that the necessity for the exercise of their powers under this provision arises from the failure of the employers to appoint members to represent employers on a board when the workmen are willing to appoint members to represent workmen, or from the failure of the workmen to appoint members to represent workmen on a board when the employers are willing to appoint members to represent employers, may, if they think fit, instead of appointing a person to act in place of the joint district board, appoint such persons as they think fit to represent the employers or the workmen, as the case may be, who have failed to appoint members to represent them; and in that case the members so

appointed by the Board of Trade shall be deemed to be members of the board representing employers or workmen as the case requires.

(2) If the joint district board within three weeks after the time at which it has been recognized under this act for any district fail to settle the first minimum rates of wages and district rules in that district, or if the joint district board within three weeks after the expiration of a notice for an application under this act to vary any minimum rate of wages or district rules fail to deal with the application, the chairman of the joint district board shall settle the rates or rules or deal with the application, as the case may be, in place of the joint district board, and any minimum rate of wages or district rules settled by him shall have the same effect for the purposes of this act as if they had been settled by the joint district board:

Provided, That, if the members of the joint district board representing the workmen and the members representing the employers agree, or if the chairman of the joint district board directs, that a specified period longer than three weeks shall for the purposes of this subsection be substituted for three weeks, this subsection shall have effect as if that specified period were therein substituted for three weeks.

Interpretation,
and provision as
to chairman.

SEC. 5. (1) In this act—

The expression "coal mine" includes a mine of stratified ironstone;

The expression "workman" means any person employed in a coal mine below ground other than—

(a) a person so employed occasionally or casually only; or

(b) a person so employed solely in surveying or measuring; or

(c) a person so employed as mechanic; or

(d) the manager or any undermanager of the mine; or

(e) any other official of the mine whose position in the mine is recognized by the joint district board as being a position different from that of a workman.

(2) If it is thought fit by any persons when appointing a chairman for the purposes of this act, or by the Board of Trade when so appointing a chairman, the office of chairman may be committed to three persons, and in that case those three persons acting by a majority shall be deemed to be the chairman for the purposes of this act.

Short title and
duration.

SEC. 6. (1) This act may be cited as the coal mines (minimum wage) act, 1912.

(2) This act shall continue in force for three years from the date of the passing thereof and no longer, unless Parliament shall otherwise determine.

SCHEDULE.

Districts.—Northumberland, Durham, Cumberland, Lancashire and Cheshire, South Yorkshire, West Yorkshire, Cleveland, Derbyshire (exclusive of South Derbyshire), South Derbyshire, Nottinghamshire, Leicestershire, Shropshire, North Staffordshire, South Stafford (exclusive of Cannock Chase) and East Worcestershire, Cannock Chase, Warwickshire, Forest of Dean, Bristol, Somerset, North Wales, South Wales, including Monmouth, and the mainland of Scotland.

Where a mine, though situate in one of these districts, has for industrial purposes been customarily dealt with in the same manner as a mine situate in an adjoining district, that mine shall for the purposes of this act be treated as situate in the latter district, if the joint district boards of the two districts so agree.

TYPICAL AWARD UNDER COAL MINES ACT.

SOUTH WALES, INCLUDING MONMOUTH DISTRICT.

Whereas at joint meetings held at Cardiff, on April 3, 1912, of the representatives of the colliery owners of South Wales and Monmouthshire and the representatives of the workmen employed at the collieries, a joint district board was constituted for the purpose of the coal mines (minimum wage) act, 1912; and I, Viscount St. Aldwyn, was appointed chairman of such board; and whereas, on April 18, 1912, such board was duly recognized by the Board of Trade as the joint district board for the district of South Wales (including Monmouth); and

Whereas the joint district board failed to settle the first minimum rates of wages and district rules within three weeks after the time at which it was recognized and the members of the board representing the workmen and the members representing the employers agreed to substitute the specified period of 10 weeks for 3 weeks, for the purpose of subsection (2) section 4 of the coal mines (minimum wage) act, 1912; and

Whereas rules of procedure for the conduct of the business of the board, and a classification of the workmen to whom the act applies, were agreed to by the board; and

Whereas it was agreed to by the board that the standard rates of December, 1879, or the equivalent as provided by clause 10 of the conciliation board agreement of December, 1910, should be taken as a basis for the general minimum rates of wages, plus the percentage additions from time to time payable under the said agreement, and that special district minimum rates less than the general district rates should be applicable to coal mines in Pembrokeshire; and

Whereas it was decided by my casting vote that a standard rate of 3s. (73 cents) should be taken as the basis for the minimum day wage rate of laborers over 18 years of age, and it was subsequently decided by my casting vote that the age for an adult workman of every class, except haulers, trammers, and riders, should be 21 instead of 18, and that on this understanding the minimum day wage rate of laborers should be reconsidered; and

Whereas the board has failed to settle the first general minimum rates of wages and district rules, and the first special minimum rates of wages for Pembrokeshire, within the aforesaid period of 10 weeks;

Now I, as chairman of the board, in pursuance of the terms of the coal mines (minimum wage) act, 1912, having heard the parties, do hereby settle the said rates, rules, and special rates, as follows, viz:

SCHEDULE I.

PART I.

General District Minimum Rates of Wages.

The general rates of wages shall be the standard rate hereinafter fixed for each class of underground workmen, to which is to be added the percentage from time to time payable under the conciliation board agreement of December, 1910.

STANDARD RATE OF DAY WAGE.

CLASS 1.—*Workmen over 21 years of age.*

	s.	d.	
1. Collier in charge of a working place, who is a regular pieceworker, and is prevented from earning piecework wages by a fault in the seam or other cause arising in the colliery and beyond his own control, or by a request from the management to work away from his place on more than seven days during a period of three months.....	4	7	(\$1.12)
(In any other case the minimum day wage rate of such a collier working at day wages away from his working place shall be the minimum day wage rate applicable to the class in which he is working.)			
2. Collier in charge of a working place who is not a worker at piecework (subject to the above rule).....	4	3	(\$1.03)
3. Colliers' helpers.....	3	4	(81.1 cents)
4. Timbermen and repairers or rippers doing timbering work:			
Regular pieceworkers.....	4	7	(\$1.12)
Day wage men.....	4	3	(\$1.03)
5. Rippers (not doing timbering work):.....	4	0	(97.3 cents)
6. Assistant timbermen and assistant rippers.....	3	4	(81.1 cents)
7. Roadmen.....	3	7	(87.2 cents)

	s.	d.	
8. Htchers:			
Leading	3	10	(93.3 cents)
Ordinary	3	6	(85.2 cents)
9. Hostlers and laborers	3	2	(77.1 cents)
10. Underground hauling engineers, electric, steam and compressed air:			
Main haulage	3	4	(81.1 cents)
Subsidiary haulage	3	2	(77.1 cents)
11. Underground pump men, electric, steam and compressed air:			
Main pumps	3	4	(81.1 cents)
Small pumps	3	2	(77.1 cents)
12. Fitters, if employed entirely underground	3	4	(81.1 cents)
13. Electricians, if employed entirely underground	3	5	(83.1 cents)
14. Rope splicers, if employed entirely underground	3	10	(93.3 cents)
15. Masons and pitmen, if employed entirely underground	4	2	(\$1.01)
16. Cog cutters	3	5	(83.1 cents)
17. Timber drawers and airway men	3	10	(93.3 cents)
18. Shacklers and sprag men, and watermen	3	2	(77.1 cents)
19. Lamp lockers, lamp lighters, oilers	3	0	(73 cents)
20. Coal-cutter men	4	3	(\$1.03)

CLASS 2.

Boys under 15 years of age	1	6	(36.5 cents)
Boys over 15 and under 16	1	9	(42.6 cents)
Boys over 16 and under 17	2	0	(48.7 cents)
Boys over 17 and under 18	2	3	(54.8 cents)
Boys over 18 and under 19	2	6	(60.8 cents)
Boys over 19 and under 20	2	9	(66.9 cents)
Boys over 20 and under 21	3	0	(73 cents)

CLASS 3.

Haulers above 18 years of age:			
1. Day haulers	3	11	(95.3 cents)
2. Night haulers	3	8	(89.2 cents)
Tonnage haulers, above 18 years of age, for hauling coal	4	2	(\$1.01)
Riders above 18 years of age	3	9	(91.3 cents)
Trammers above 18 years of age	3	3	(79.1 cents)

In collieries where night haulers are now paid day hauling rates that practice shall continue.

PART II.

Special District Minimum Rates of Day Wage for Coal Miners in Pembrokeshire.

CLASS 1.—*Mines east of the River Claddau.*

The rates fixed are standard rates of December, 1879, to which is to be added the percentage from time to time payable under the conciliation board agreement of December, 1910.

	s.	d.	
1. Coal hewers	3	0	(73 cents)
2. Underground enginemen	2	7	(62.9 cents)
3. Htchers and banksmen	2	7	(62.9 cents)
4. Roadmen, repairers, haulers, riders, and beam men	2	6	(60.8 cents)
5. Trammers over 16 years of age	2	2	(52.7 cents)
6. Boys under 15 years (increasing by a standard rate of 2d. (48.7 cents) with each year of age until placed in one of the above classes)	1	0	(24.3 cents)

CLASS 2.—*Mines west of the River Claddau.*

The minimum rates of day wages shall be the following net rates: Cutters and repairers, 3s. (73 cents); assistant cutters, assistant repairers and hitches, 2s. 9d. (66.9 cents); trammers, beam men, and unskilled laborers, 2s. 6d. (60.8 cents); boys under 16, 1s. (24.3 cents); from 16 to 18, 1s. 6d. (36.5 cents); from 18 to 20, 2s. (48.7 cents); after 20, their class rate.

PART III.

The several scales applicable to boys in this schedule shall apply to boys who have started underground work at 14, and have continued to work underground. A boy

starting underground work at a later age than 14 to be paid the minimum provided for the age a year below his actual age until he has had a year's experience of underground work. Afterwards the minimum applicable to his age shall apply.

The minimum wages fixed by this schedule shall be free from any deductions for explosives.

All customs, usages, practices, or conditions for the payment of extra or additional wages, or for the supply of fuel, now existing at the respective coal mines to which the minimum wages fixed in this schedule are to apply, shall remain in full force and virtue notwithstanding anything contained in this schedule, except that the minimum day wage fixed for workmen doing haulers' work is to include payment for dooring.

SCHEDULE II.

DISTRICT RULES.

1. The following rules shall apply to the working of all coal mines, subject to the coal mines (minimum wage) act, 1912, hereinafter called "the act," within South Wales and Monmouthshire.

2. In these rules the word "workman" means any person to whom the coal mines (minimum wage) act, 1912, applies; the word "pay" means the period in respect of which workman's wages are for the time being payable, and the word "day" means a colliery working day.

3. A workman who has reached 63 years of age shall be regarded as an aged workman within the meaning of the act, and shall be excluded from the right to wages at the minimum rate. A workman who from physical causes is unable to do the work ordinarily done by a man in his position in the mine or who is partially disabled by illness or accident shall be regarded as an infirm workman within the meaning of the act, and shall be excluded from the right to wages at the minimum rate. Where there is no disagreement as to whether a workman has reached the age of 63 years, or is infirm, or partially disabled by illness or accident, a certificate signed by the workman affected and the manager of the mine shall be conclusive evidence in reference thereto: *Provided*, That in a case of a workman partially disabled by illness or accident, such certificate shall only apply during the period of such partial disablement.

4. A workman shall forfeit his right to wages at the minimum rate on any day on which he delays in going to his working place or work at the proper time, or leaves his working place or work before the proper time, or fails to perform throughout the whole of the shift his work with diligence and efficiency and in accordance with the reasonable instruction of the official having charge of the district in which such workman shall be engaged.

5. A workman shall regularly present himself for work when the colliery is open for work, and shall forfeit his right to wages at the minimum rate during any pay in which he has not worked at least five-sixths of his possible working days, unless prevented from working by accident or illness. In case of accident or illness the workman shall, if required, submit himself to the examination of a duly qualified medical man to be appointed by the employer; and in case he shall refuse to do so, he shall forfeit his right to wages at a minimum rate during that pay.

Every collier and collier's helper shall at all times work, get, and send out the largest possible quantity of clean coal contracted to be gotten from his working place, and shall perform at least such an amount of work as, at the rate set forth in the price list or other agreed rates applicable, would entitle him to earnings equivalent to the minimum rate. If at any time any workman shall, in consequence of circumstances over which he alleges he has no control, be unable to perform such an amount of work as would entitle him under the price list or other agreed rates to a sum equal to the daily minimum rate, then and in such case, he shall forthwith give notice thereof to the official in charge of the district in which he shall be engaged, and if such official shall not agree that the workman can not earn at the work upon which he shall be engaged a sum under the price list or other agreed rates equal to the daily minimum rate, then the matter shall be decided in the manner provided by rule 8. The management shall be at liberty to remove the workman to some other part of the colliery.

If any workman shall act in contravention of this rule, he shall forfeit the right to wages at the minimum rate for the pay in which such contravention shall take place.

6. If a case of emergency in or about or connected with the colliery shall render a workman's services for the time being unnecessary, and such workman shall be informed of such emergency when or before he reaches the pit bottom or a station within 300 yards therefrom, then such workman shall forthwith return to the surface (facilities being given) and shall not be entitled to any payment in respect of that shift. If the workman travels to his working place and is there informed or discovers that something has happened to prevent him working in his place and is offered but refuses

other work which he may properly be called upon to perform, he shall not be entitled to claim any wages in respect of that shift. In the event of any interruption of work during the shift of any workman due to an emergency over which the management has no control, whereby he shall be prevented from working continuously until the end of his shift, then he shall be entitled only to such a proportion of the minimum rate for the shift as the time during which he shall have worked shall bear to the total number of hours of such shift. Facilities shall be given to enable him to ascend the mine as soon as practicable.

7. (1) In ascertaining whether the minimum wage has been earned by any workman on piecework, the total earnings during two consecutive weeks shall be divided by the number of shifts and parts of shifts he has worked during such two weeks. Upon the average earnings of any workman for two weeks being ascertained in accordance with this rule, the wages of such workman shall be adjusted and the amount found to be due to or from him ascertained and paid or debited to him as the case may be, and in the latter event the amount debited shall be deemed to be a payment on account of wages to become subsequently due to him.

(2) In cases where workmen are working as partners on shares and pooling their earnings, no member of such partnership shall be entitled to be made up to the minimum rate if the average earnings per day of the set over the whole week shall amount to the minimum rate.

(3) In ascertaining the earnings of workmen employed upon piecework for the purposes of the minimum wage there shall not be deducted from the gross earnings for the helper more than the actual wages paid to the helper by the workman. All rates of wages so paid to the helper by the workman shall be registered with the management. No workman on piecework shall, without the consent of the management, fix the wage paid to his helper at more than a standard rate of 6d. (12.2 cents) per day, plus percentage, above the minimum standard rate fixed for the class of helper in schedule 1.

8. Should any question arise as to whether any particular workman employed underground is a workman to whom the minimum rate is to apply, or whether a workman has failed to comply with any of the conditions contained in these rules, or whether by noncompliance with any of these rules such workman has forfeited his right to the minimum rate, such question shall be decided in the following manner:

(a) By agreement between the workman concerned and the official in charge of the mine. Failing agreement, by two officials of the colliery representing the employer on the one side and two members of the committee of the local lodge of the Workmen's Federation (or not more than two representatives appointed by them) on the other side. Again failing agreement, by the manager of the mine and the district miners' agent.

(b) Still failing agreement, by an umpire to be selected by them (or if they disagree in the selection, by lot), without delay, from one of the panels constituted as herein-after provided. Three panels of persons having a knowledge of mining to be prepared by the two chairmen of the employers' and workmen's representatives on the joint district board. One of such panels shall be constituted for questions arising in the Newport district, one for questions arising in the Swansea district (including Pembroke-shire), one for questions arising in the Cardiff district. In case of difference as to the constitution of any panel, such panel shall be settled by the independent chairman of the joint district board. The Newport district shall consist of collieries situated to the east of the Rumney River. The Swansea district shall consist of collieries situated westward of the Clydyd River, and of a line drawn from the top of that river into the Neath River at Ystradavellte. The Cardiff district shall consist of collieries situated between the Newport and the Swansea district.

If required by either employer or workman, a panel may be revised at the end of every 12 months from the constitution thereof. For the determination of any question arising under this rule, the employers and workmen respectively shall be entitled to call such evidence as they may think proper before the person or persons who may have to determine such question, and such person or persons may make such inspection of workings as he or they may deem necessary for the proper determination of the matter in question.

Any questions that may arise for determination under paragraph (a) of this rule shall be determined within a period of three clear days from the date upon which the question to be determined first arose, and any question to be determined by the umpire shall be determined within seven clear days from the said date, or such further time as the umpire shall appoint in writing. The colliery representative and the district miners' agent shall be entitled to attend and represent the employers and workmen, respectively, before the umpire.

9. A certificate in writing of any decision by any person or persons under the last preceding rule shall be given by such person or persons to both or either of the parties when requested, and such certificate shall be of conclusive evidence of the decision. Any certificate so given as to the infirmity of a workman may be canceled or varied

on the application of either party after the expiration of six weeks from the date of the certificate. Any application to cancel or vary such certificate shall be determined as a question under the last preceding rule. The expenses and charges of the umpire shall be paid by the joint district board, and apportioned in the same manner as the expenses of the joint district board.

10. Except as expressly varied by these rules, all customs, usages, and conditions of employment existing at the respective coal mines to which these rules are applicable shall remain in full force unless ordered by mutual agreement.

11. Overmen, traffic foremen, firemen, assistant firemen, brattice men, shot firers, master haulers, farriers, and persons whose duty is that of inspection or supervision are not workmen to whom the coal mines (minimum wage) act applies.

12. In the event of any question arising as to the construction or meaning of these rules, it shall be decided by the independent chairman of the joint district board.

(Signed) ST. ALDWYN.

JULY 5, 1912.

TEXT OF LAWS OF AUSTRALIA AND NEW ZEALAND DIRECTLY FIXING A MINIMUM WAGE.

VICTORIA.

[Factories and shops act, 1912, No. 2386 (Dec. 7, 1912).]

Minimum wage.

SECTION 49. (1) No person whosoever unless in receipt of a weekly wage of at least 2s. 6d. (60.8 cents) shall be employed in any factory.

(2) No person whosoever unless related in the first or second degree by blood or marriage to the employer shall be employed outside a factory in wholly or partly preparing or manufacturing any article for trade or sale unless in receipt of a weekly wage of at least 2s. 6d. (60.8 cents).

Prohibition of certain premiums and guaranties.

191. Any person who either directly or indirectly or by any pretense or device requires or permits any person to pay or give or who receives from any person any consideration premium or bonus for engaging or employing any female as an apprentice or improver in preparing or manufacturing articles of clothing or wearing apparel shall be guilty of an offense and shall be liable on conviction to a penalty not more than £10 (\$48.67); and the person who pays or gives such consideration premium or bonus may recover the same in any court of competent jurisdiction from the person who received the same.

192. Any shopkeeper (other than a registered pharmaceutical chemist) who either directly or indirectly or by any pretense or device requires or permits any person to pay or give him or who receives from any person any consideration premium or bonus for engaging or employing any person in connection with the selling of goods or in connection with the business of a hairdresser or barber as an apprentice or improver in a shop shall be guilty of an offense and shall be liable on conviction to a penalty not more than £10 (\$48.67); and the person who pays or gives such consideration premium or bonus may recover the same in any court of competent jurisdiction from the person who received the same.

193. (1) Except with the consent of the minister in writing no person shall require or permit any person to pay any sum of money or enter into or make any guaranty or promise requiring or undertaking that such person shall pay any sum of money in the event of the behavior or attendance or obedience of any apprentice improver or employee not being at any time satisfactory to the employer.

(2) Any such guaranty or promise as aforesaid or to the like effect entered into or made after the commencement of this act without the consent of the minister as aforesaid shall be null and void, and any person who without such consent makes or requires such guaranty or promise shall be liable on conviction to a penalty not exceeding £10 (\$48.67).

(3) Any sum which after the commencement of this act is paid in pursuance of such a guaranty or promise as aforesaid or to the like effect made in contravention of this section shall be returned to the person paying same; and the person who has so paid any such sum may if the same is not returned to him on demand recover the same with costs in any court of competent jurisdiction from the person who received the same.

NEW SOUTH WALES.

[Minimum wage act, 1908 (Dec. 24, 1908).]

Minimum wage.

SECTION 4. No workman or shop assistant shall be employed unless in the receipt of a weekly wage of at least 4s. (97.3 cents), irrespective of any amount earned as overtime.

Whosoever employs any such person in contravention of this section shall be liable to a penalty not exceeding £2 (\$9.73).

SEC. 5. Whosoever, either directly or indirectly, or by any pretense or device, requires or permits any person to pay or give, or receives from any person any consideration, premium, or bonus for the engaging or employing by him of any female in preparing, working at, dealing with, or manufacturing articles of clothing or wearing apparel for trade or sale shall be liable on conviction to a penalty not exceeding £10 (\$48.67); and the person who has paid or given such consideration, premium, or bonus may recover the same in any court of competent jurisdiction from the person who received the same.

QUEENSLAND.

[Factories and shops act 1900 (Dec. 28, 1900) sec. 45, as amended by factories and shops act amendment act 1908 (Apr. 15, 1908) sec. 12.]

SECTION 12. Subsection 1 of section 45 of the principal act is repealed, and the following subsection is inserted in lieu thereof:

1. Every person who is employed in any capacity in a factory or shop shall be entitled to receive from the occupier payment for his work at such rate as is agreed on, being not less than:

(a) In the case of a person under 21 years of age, a rate of 5s. (\$1.22) per week during the first year of his employment, with an annual increase of not less than 2s. 6d. (61 cents) per week during each year of the next succeeding five years of his employment in the same trade.

(b) In the case of a person not under 21 years of age who has been employed in any capacity in a factory or factories or shop or shops for a period of not less than four years (whether such employment is continuous or not), a rate of not less than 15s. (\$3.65) per week for the first year, and 17s. 6d. (\$4.26) per week for the next and succeeding years.

Every such weekly wage shall be paid in sterling money, and shall not, under any circumstances or pretense or device whatsoever, be subject to any diminution so as to reduce the amount thereof to a less sum than is hereinbefore prescribed for each worker respectively.

SOUTH AUSTRALIA.

[Factories act, 1907 (Dec. 21, 1907).]

SECTION 114. (1) No occupier of a factory shall pay any employee therein a weekly wage of less than 4s. (97.3 cents).

Penalty, £10 (\$48.67).

SEC. 115. (1) No person shall either directly or indirectly, or by any pretense or device—

(a) Require or permit any person to pay or give, or

(b) Receive from any person

any consideration, premium, or bonus for engaging or employing a female as an apprentice or improver in preparing or manufacturing articles of clothing or wearing apparel.

Penalty, £10 (\$48.67).

(2) The person who pays or gives such consideration, premium, or bonus may recover the same in a court of competent jurisdiction from the person who receives the same.

SEC. 116. (1) Except with the consent in writing of the minister, no person shall require or permit any person—

(a) To pay a sum of money; or

(b) To enter into or make a guaranty or promise requiring or undertaking that such person shall pay a sum of money in the event of the behavior or attendance or obedience of an apprentice, improver, or employee not being satisfactory to the employer.

Penalty, £10 (\$48.67).

- (2) Any such guaranty or promise, or a guaranty or promise to the like effect, entered into or made after the commencement of this act without such consent shall be void.
- (3) Any sum which after the commencement of this act is paid in contravention of this section shall, unless repaid upon demand, be recoverable with costs in a court of competent jurisdiction.

TASMANIA.

[Factories act 1911, sec. 63 (Jan. 10, 1912).]

As to the payment of wages.

63. In order to prevent persons being employed in factories without reasonable remuneration in money the following provisions shall apply:

I. Every person who is employed in any capacity in a factory shall be entitled to receive from the occupier such payment for his work as is agreed on, being not less than 4 s. (97 cents) a week for the first year of employment in the trade, 7 s. (\$1.70) a week for the second year, and 10 s. (\$2.43) a week for the third year, 13 s. (\$3.16) a week for the fourth year, 16 s. (\$3.89) a week for the fifth year, 19 s. (\$4.62) a week for the sixth year, and thereafter not less than a wage of 20 s. (\$4.87) a week, unless such person is the holder of a license to work at a less wage under section 28 of the wages boards act, 1910.

II. Such rate of payment shall in every case be irrespective of overtime.

III. Such payment shall be made in full at not more than fortnightly intervals.

IV. If the occupier makes default for seven days in the full and punctual payment of any money payable by him as aforesaid, he is liable to a fine not exceeding 5 s. (\$1.22) for every day thereafter during which such default continues.

V. Without affecting the other civil remedies for the recovery of money payable under this section to a person employed in a factory, civil proceedings for the recovery thereof may be taken by an inspector in the name and on behalf of the person entitled to payment, in any case where the inspector is satisfied that default in payment has been made.

VI. No premium in respect of the employment of any person shall be paid to or be received by the occupier, whether such premium is paid by the person employed or by some other person; and if the occupier commits any breach of the provisions of this paragraph he is liable to a fine not exceeding £10 (\$48.67).

VII. In any case where a premium has been paid or received in breach of the last preceding paragraph, or where the occupier has made any deduction from wages, or received from the person employed or from any other person on his or her behalf any sum in respect of such premium or employment, then, irrespective of any fine to which he thereby becomes liable, the amount so paid, deducted, or received may be recovered from the occupier in civil proceedings instituted by an inspector in the name or on behalf of the person concerned.

NEW ZEALAND.

Provisions to secure reasonable remuneration to persons employed in factories.

[The factories act, 1908 (Aug. 4, 1908).]

SECTION 32 (as amended by act of Dec. 3, 1910). In order to prevent persons being employed in factories without reasonable remuneration in money, the following provisions shall apply:

(a) Every person who is employed in any capacity in a factory shall be entitled to receive from the occupier such payment for his work as is agreed on, being not less than 5s. (\$1.22) a week for the first year of employment in the trade, 8s. (\$1.95) a week for the second year, 11s. (\$2.68) a week for the third year, and so on by additions of 3s. (73 cents) a week for each year of employment in the same trade until a wage of 20s. (\$4.87) a week is reached, and thereafter not less than a wage of 20s. (\$4.87) a week.

(aa) No deduction shall be made from the wages of any boy or any woman under 18 years of age, except for the time lost through the worker's illness or default, or on account of the temporary closing of the factory for cleaning or repairing the machinery.

(b) Such rate of payment shall in every case be irrespective of overtime. * * *

(f) No premium in respect of the employment of any person shall be paid to or received by the occupier, whether such premium is paid by the person employed or by some other person; and if the occupier commits any breach of the provisions of this paragraph he is liable to a fine not exceeding £10 (\$48.67).

(g) In any case where a premium has been paid or received in breach of the last preceding paragraph, or where the occupier has made any deduction from wages, or received from the person employed or from any person on his or her behalf any sum in respect of such premium or employment, then, irrespective of any fine to which he thereby becomes liable, the amount so paid, deducted, or received may be recovered from the occupier in civil proceedings instituted by an inspector in the name and on behalf of the person concerned.

SECTION 9 (as amended by act of Dec. 3, 1910). In order to prevent shop assistants being employed in shops without reasonable remuneration in money, the following provisions shall apply:

(a) Every person who is employed in any capacity in a shop shall be entitled to receive from the occupier payment for the work at such rate as is agreed upon, being in no case less than 5s. (\$1.22) per week for the first year, 8s. (\$1.95) per week for the second year, and 11s. (\$2.68) per week for the third year until a wage of 20s. (\$4.87) a week is reached, and thereafter not less than 20s. (\$4.87) a week.

(b) Such rate of payment shall in every case be irrespective of overtime. * * *

(f) No premium in respect of the employment of any shop assistant shall be paid to or be received by the occupier, whether such premium is paid by the shop assistant employed by some other person; and if the occupier commits any breach of the provisions of this paragraph he shall be liable to a fine not exceeding £10 (\$48.67).

(g) In any case where a premium has been paid or received in breach of the last preceding paragraph, or where the occupier has made any deduction from wages, or received from the shop assistant, or from any person on behalf of the shop assistant, any sum in respect of such premium or employment, then, irrespective of any fine to which he thereby becomes liable, the amount so paid, deducted, or received may be recovered from the occupier in civil proceedings instituted by the inspector in the name and on behalf of the shop assistant concerned.

BILL RECOMMENDED BY NEW YORK STATE FACTORY INVESTIGATING COMMISSION.

An Act to protect the health, morals and welfare of women and minors employed in industry by establishing a wage commission and providing for the determination of living wages for women and minors.

SECTION 1. A State wage commission, hereinafter referred to as the commission, is hereby created, consisting of three commissioners, to be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be designated by the governor as chairman. The commissioner of labor shall also be an ex officio member of the commission but shall not have a vote on orders, decisions, or determinations. The term of office of appointive members of the commission shall be for three years, except that the first members thereof shall be appointed for such terms that the term of one member shall expire on January first, nineteen hundred and seventeen, and on January first of every succeeding year. Successors shall be appointed in like manner for a full term of three years. Vacancies shall be filled in like manner by appointment for the unexpired time. The commission shall have an official seal which shall be judicially noticed. The commission shall publish an official bulletin from time to time and shall make an annual report to the legislature of its investigations and proceedings on or about the first day of February.

SEC. 2. The commission may appoint and remove a secretary and such other employees as may be needed to carry out the provisions of this chapter. The authority, duties, and compensation of all subordinates and employees shall be fixed by the commission.

SEC. 3. Each commissioner shall be paid ten dollars for each day's service. The commissioners and their subordinates shall be entitled to their actual and necessary expenses while traveling on the business of the commission. The salaries and compensation of the subordinates and all other expenses of the commission shall be paid out of the State treasury upon vouchers signed by the chairman.

SEC. 4. The commission shall hold stated meetings at least once a month during the year and shall hold other meetings at such times and places as the needs of the public service may require, which meetings shall be called by the chairman or by any two members of the commission. All meetings of the commission shall be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each commissioner upon every question and records of its examinations and other official action.

SEC. 5. Any investigation, inquiry, or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or the secretary, and the decision, determination, or order of a commissioner or the secretary, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the decision, determination, or order of the commission. Each commissioner and the secretary shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take affidavits and depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, and documents before the commission or before any wage board created pursuant to this chapter.

SEC. 6. The commission shall adopt reasonable rules regulating and providing for the method of making investigations; the conduct of hearings, investigations, and inquiries; the organization and procedure of wage boards created pursuant to this chapter; and otherwise for carrying into effect the provisions of this chapter.

SEC. 7. The commission or a commissioner or secretary or a wage board in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

SEC. 8. A subpoena shall be signed and issued by a commissioner or by the secretary of the commission and may be served by any person of full age in the same manner as a subpoena issued out of a court of record. If a person fails, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced in writing, he shall be guilty of a misdemeanor.

SEC. 9. If a person in attendance before the commission or a commissioner or the secretary, or before any wage board, refuses, without reasonable cause, to be examined, or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or the secretary, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determines that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

SEC. 10. Each witness who appears in obedience to a subpoena before the commission or a commissioner or the secretary, or before a wage board or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the State treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, the secretary, or wage board or person acting under the authority of the commission, shall be entitled to fees or compensation from the State treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.

SEC. 11. The commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

SEC. 12. Upon request of the commission, the commissioner of labor shall cause the bureau of statistics and information or other bureaus of the department of labor to gather such statistics and information as the commission may require.

SEC. 13. Every employer of women and minors shall keep a register of the names and addresses of and the wages paid to all women and minors employed by him, the occupation of each and the number of hours that they are employed by the day or by the week, and their actual working hours for such periods, and every such employer shall on request, permit the commission or any of its members or its secretary or agents to inspect such register. Every such employer shall also furnish in writing to the commission any information concerning the foregoing matters that the commission may require.

SEC. 14. The terms "living wage" or "living wages" shall mean wages sufficient to supply the necessary cost of living and to maintain the worker in health, and where the words "minimum wage" or "minimum wages" are used in this act they shall be deemed to have the same meaning as "living wage" or "living wages."

SEC. 15. The commission shall have power to investigate wages and working conditions in any occupation in the State in order to determine whether living wages are

paid to women and minors employed therein. Such investigation shall also be made at the request of not less than one hundred persons engaged in any occupation in which any women or minors are employed. The names of the persons making such request shall not be made public.

SEC. 16. If after such investigation the commission has reason to believe that a substantial number of women and minors employed in the occupation investigated receive less than living wages, the commission shall establish a wage board consisting of an equal number of representatives of employers in the occupation in question and of persons to represent such employees in said occupation and of one or more disinterested persons appointed by the commission to represent the public. So far as practicable the selection of members representing employers and employees shall be through election by employers and employees affected, respectively. The commission shall designate the chairman from among the representatives of the public and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and of the determination of the board. The members of wage boards shall be compensated at the same rate as jurors in civil cases in the supreme court in the county of New York and shall be allowed the necessary traveling and clerical expenses incurred in the performance of their duties, which shall be paid as are the expenses of the commission.

SEC. 17. Each wage board shall have access to all of the statistics and information gathered by the commission with reference to wages and conditions in any occupation under investigation and any other data pertinent thereto. Each wage board shall, after a careful investigation and after such public hearings as it finds necessary, endeavor to determine the amount of the living wage, whether by time rate or piece rate, suitable for a female employee of ordinary ability in such occupation or any or all of the branches thereof, and also suitable minimum wages for learners and apprentices and for minors below the age of eighteen years. In determining such living wage the board may take into consideration the financial condition of the industry and distribute any advance in wages that may be found necessary, to take effect at specified intervals. If the majority of the members of the wage board agree upon such wage determinations, they shall report such determinations to the commission, together with a statement of the reasons therefor and facts relating thereto.

SEC. 18. If the commission deems proper, it may, after it receives the report of a wage board, recommit the subject or any part thereof to the same or to a new wage board. If the report of a wage board is accepted by the commission, a summary of its findings and determinations shall be published in the bulletin of the commission and in such other manner as the commission may deem advisable. Copies of the full report of the wage board, together with the testimony taken before it, shall be kept on file at the office of the commission and open to public inspection. The commission shall hold a public hearing on the report of the wage board, notice of which shall be published in such newspapers as the board may prescribe, at least once, not less than thirty days prior thereto, and given by mail to all parties in interest who have filed requests therefor with the commission. The commission, upon consideration of the report and findings of the wage board and the testimony taken at the public hearing, shall then determine the amount of the living wage by time rate or piece rate suitable for a female employee of ordinary ability in the occupation investigated, or any or all of the branches thereof, and also suitable minimum wages for learners and apprentices and for minors below the age of eighteen years. The commission shall fix a time when its determination of such living wage shall take effect, which shall be not less than thirty days from the date of entry of such determination. In determining such living wage the commission may take into consideration the financial condition of the industry and distribute any advance in wage that may be found necessary to take effect at specific intervals. A summary of the findings of the commission and its determinations and recommendations shall be published in the bulletin of the commission and in such newspapers as the commission may prescribe and in such other manner as the commission may deem advisable. A summary of such findings, determinations, and recommendations shall be mailed to all persons who have filed requests therefor with the commission. If the wage board fails to submit a report within a reasonable time fixed by the commission, the subject may be referred to a new wage board, or the commission itself, after notice that the board has failed to make any determinations or recommendations, may proceed to hold a public hearing and determine the amount of the living wage in the manner hereinbefore provided.

SEC. 19. In any occupation or branch thereof in which a minimum time rate of wages only has been fixed, the commission may issue to a woman physically defective a special license authorizing her employment for a wage less than the legal minimum

wage: *Provided*, That the number of such licensees shall not exceed one-tenth of the entire number of women and minor workers in any establishment.

SEC. 20. Whenever a minimum-wage rate has been established in any occupation, the commission may, upon petition of either employers or employees, reconvene the wage board or establish a new wage board and any recommendation made by such board or action thereby shall be dealt with in the same manner as the recommendation or act of a wage board under sections seventeen and eighteen hereof.

SEC. 21. The commission may inquire into wages paid to minors in any occupation in which the majority of employees are minors and may, after giving public hearings, determine the minimum wage suitable for such minors. When the commission has made such a determination it shall proceed in the same manner as if the determination had been recommended to the commission by a wage board.

SEC. 22. The commission shall from time to time make inquiry to determine whether employers in each occupation investigated are obeying its orders and determinations and shall publish in such newspapers as it may designate the names of those employers who fail to comply therewith. The type in which the employers' names shall be printed shall not be smaller than that in which the news matter of the paper is printed. Such publication may also be made in any other manner that the commission may determine to be necessary or proper.

SEC. 23. Any newspaper neglecting to publish the findings, orders, determinations, recommendations or notices of the commission at its regular rates for the space taken shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars for each offense.

SEC. 24. No member of the commission and no newspaper publisher, proprietor, editor, or employee thereof, and no other person shall be liable to an action for damages for publishing the name of any employer in accordance with the provisions of this act, unless such publication contains some willful misrepresentation.

SEC. 25. Any employer who discharges or in any other manner discriminates against any employee because such employee has testified or is about to testify, or has served or is about to serve upon a wage board, or is or has been active in the formation thereof, or has given or is about to give information concerning the conditions of such employee's employment, or because the employer believes that the employee may testify or may serve upon a wage board, or may give information concerning the conditions of the employee's employment in any investigation or proceeding relative to the enforcement of this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars for each offense.

SEC. 26. This act shall take effect October first, nineteen hundred and fifteen.

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U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

ROYAL MEEKER, Commissioner

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LABOR LAWS OF THE UNITED STATES SERIES: No. 6

DECISIONS OF COURTS
AFFECTING LABOR

1914



MAY, 1915

WASHINGTON
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1915

SERIES OF BULLETINS PUBLISHED BY THE BUREAU OF LABOR STATISTICS.

The publication of the Annual and Special Reports and of the bimonthly Bulletin has been discontinued, and since July, 1912, a Bulletin has been published at irregular intervals. Each number contains matter devoted to one of a series of general subjects. These Bulletins are numbered consecutively in each series and also carry a consecutive whole number, beginning with No. 101. A list of the series, together with the individual Bulletins falling under each, is given below. A list of the Reports and Bulletins of the Bureau issued prior to July 1, 1912, will be furnished on application.

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No. 7. Union scale of wages and hours of labor, May 15, 1913. (Bul. No. 143.)

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No. 9. Wages and regularity of employment in the cloak, suit, and skirt industry. (Bul. No. 147.)

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No. 12. Wages and hours of labor in the lumber, millwork, and furniture industries, 1907 to 1913. (Bul. No. 153.)

No. 13. Wages and hours of labor in the boot and shoe and hosiery and underwear industries, 1907 to 1913. (Bul. No. 154.)

No. 14. Wages and hours of labor in the clothing and cigar industries, 1911 to 1913. (Bul. No. 161.)

No. 15. Wages and hours of labor in the building and repairing of steam railroad cars, 1907 to 1913. (Bul. No. 163.)

No. 16. Wages and hours of labor in the iron and steel industry in the United States, 1907 to 1913. (Bul. No. 168.)

[See also third page of cover.]

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REVIEW OF DECISIONS OF COURTS AFFECTING LABOR, 1914.

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INTRODUCTION.

This is the third annual bulletin devoted to the subject of the interpretation of labor laws by the courts, the preceding bulletins in this series being No. 112 and No. 152. During the publication of the bimonthly bulletins of this Bureau, ending with No. 100, practically every bulletin contained some pages of material of this nature. The present series began with the year 1912. The decisions reproduced are mainly those rendered by the Federal courts or by the State courts of last resort, though in a few cases the opinions of subordinate courts of appellate jurisdiction have been used. Not all cases of the classes considered have been noted, the purpose being to show the construction placed upon labor legislation and the application of the common law to the labor contract and its incidents by the selection of representative cases. Questions of constitutionality and those affecting the development of the new forms of legislation, together with cases affecting the status and powers of organized labor, have received the fullest attention. Opinions of the Attorney General of the United States construing Federal labor legislation have appeared in the two preceding bulletins named, but no opinion of this class was handed down by this official during the year 1914.

The method of presentation is that which has been systematically followed in the past—i. e., an abridged statement of facts, followed in most instances by quotations from the opinions of the court, showing the conclusions reached and the grounds therefor. In a number of cases, however, this procedure has been departed from by a very brief statement of the conclusions showing the application of the statute in question to the particular point referred to the court for decision.

The National Reporter System, published by the West Publishing Co., has been depended upon for the court decisions reproduced, except in the matter of reports of cases decided in the courts of the

District of Columbia, for which the Washington Law Reporter was used. The decisions presented are those appearing in the foregoing publications during the calendar year 1914, with the exception of a few decisions by the Supreme Court of the United States on cases argued during the calendar year named, the opinions being rendered early in 1915. The reporters, etc., covered are as follows:

Supreme Court Reporter, volume 34, page 48, to volume 35, page 25.

Federal Reporter, volume 208, page 497, to volume 217, page 688.

Northeastern Reporter, volume 103, page 401, to volume 106, page 1087.

Atlantic Reporter, volume 88, page 977, to volume 92, page 512.

Southeastern Reporter, volume 80, page 225, to volume 83, page 672.

Southern Reporter, volume 63, page 505, to volume 66, page 456.

Southwestern Reporter, volume 161, page 1, to volume 170, page 1199.

Northwestern Reporter, volume 144, page 209, to volume 149, page 720.

Pacific Reporter, volume 136, page 849, to volume 144, page 576.

Opinions of Attorney General, volume 30, pages 241 to 288.

Washington Law Reporter, volume 42.

Perhaps the most interesting class of decisions, as well as one of the most numerous, is the group relating to the subject of workmen's compensation—a type of legislation which was enacted for the purpose of doing away with litigation. However, the type of law is new in the United States, and many expressions are used which seem to require legal definition, while the construction of the laws must necessarily be made authoritative by a process of adjudication. Many points are of minor importance and doubtless represent chiefly a desire to secure early definiteness in the construction of the details of the acts. The Federal employers' liability act continues to be the subject of numerous decisions as to its scope, considerable divergence as to liberality being noticed. Interesting and important decisions relative to labor organizations are also presented in this bulletin, notably the closing up of the long, protracted Danbury Hatters' Case (p. 140), the dissolution of the injunction in the case *Mitchell v. Hitchman Coal & Coke Co.* (p. 315), and the declaration of unconstitutionality of the so-called coercion law of Kansas (*Coppage v. Kansas*, p. 147).

DECISIONS OF COURTS.

Court decisions are divided into two groups, dependent upon whether they are based upon statutes or upon the principles of the common law not enacted into statute form. In this review, however, this distinction is not observed, but the cases are grouped in a general way according to the subject matter considered.

CONTRACT OF EMPLOYMENT.

The question of the labor contract has been the subject of but few laws, so that the decisions under this head are chiefly those that apply the principles of the common law.

The reformation of a written contract obtained by fraud was passed upon in the case *Pierson v. Kingman Milling Co.* (p. 272), in which an injured workman signed a release on the presumption that he was secured in employment for life. The court held that the contract should be made to conform to the oral representations made at the time, and that such a contract was enforceable, not being within the statute of frauds, and not void for indefiniteness. The proper form of procedure in case of the breach of a contract of this nature was considered in *Pennsylvania Co. v. Good* (p. 57), the plaintiff being held in this instance to be barred by the statute of limitations. That an employee may properly be discharged before the end of the term for which he was engaged when he violates the rules of his employer was held in *Corley v. Rivers* (p. 274). The effect of the terms used in a contract for employment was considered in *Resener v. Watts, Ritter & Co.* (p. 275), the court holding that, in the absence of other facts, a hiring on a monthly or yearly salary would be presumed to be a hiring at will. It was held in *Nesbit v. Giblin* (p. 275) that a conditional resignation must be accepted within a reasonable time if the employer desires to terminate the contract, and that damages will lie for a discharge after conduct which would indicate the purpose of the employer to continue the employment. The liability of an employer for the wrongful acts of his employees was declared in the case *Birmingham Ledger Co. v. Buchanan* (p. 277), where the agents of a newspaper company forcibly detained newsboys to prevent their taking employment with a rival. An unratified assault on a third party by an employee was held not to make the employer liable in *Matsuda v. Hammond* (p. 276); while a judgment declaring the non-liability of the employer for a fatal assault by the employee on a trespasser was reversed in *Tarnowski v. L. S. & M. S. R. Co.* (p. 278).

The existence of the relation of employer and employee came up for consideration in some cases in which workmen were being transported to or from their places of employment. In *Indianapolis T. & T. Co. v. Isgrig* (p. 288) it was held that a street railway employee riding home on a pass containing a stipulation exempting the company from liability for death or injury while using the same was a passenger and entitled to protection as such, the pass being presumed to be a part of the employee's wages, and not a gratuity. In *Klinck v. Chicago Street Ry. Co.* (p. 289) the same view was taken; while in *Charleston & W. C. R. Co. v. Thompson* (p. 103), this principle was held to apply to the members of an employee's family riding on a pass,

such pass being held to be a part of the employee's compensation, and permissible as such under the Federal law known as the "Hepburn Act." A fireman riding as a passenger on an engine in violation of rules was held to be a trespasser, for whose death by accident the company was not liable (*Dixon v. Central of Ga. Ry. Co.*, p. 289).

The right of an employee to recover damages where a third party interferes to procure his discharge was considered in *Bausbach v. Reiff* (p. 294), in which a verdict in favor of a group of workmen who were charged with conspiracy to procure the discharge of an employee was reversed, and a new trial ordered. In *Johnson v. Aetna Life Ins. Co.* (p. 292) it was held that while a letter demanding the discharge of an employee was prima facie evidence of interference, the evidence failed to disclose the causal connection necessary, and the company was held not to be liable in this case. In another case, *Heffernan v. Whittlsey* (p. 296), an employee secured the discharge of his rival, who thereupon sued the company and the interfering employee. Conspiracy was not found, nor was there sufficient evidence to support the charge of malice against the company, so that it was discharged from liability, while the worker who instigated the charges was held liable in damages.

WAGES.

The question of minimum wages received its first notice in the courts of this country last year in connection with the Oregon statute. In *Stettler v. O'Hara* (p. 173) the constitutionality of the statute was upheld, and the power of the commission to which its enforcement was committed to make local and specific applications of the act was affirmed. In *Simpson v. O'Hara* (p. 172) the act was again held to be constitutional, as not being inimical to the provisions of the fourteenth amendment to the Federal Constitution. The rate of wages was considered in another aspect in *Wright v. Hctor* (p. 186), a statute requiring union labor to be employed and fixing the rate of wages at \$2 per day being held unconstitutional.

The question of rates fixed by ordinance was involved in the case *Malette v. City of Spokane* (p. 191). In this case the validity of the ordinance was sustained, as within the power of the State to determine under what conditions it would make contracts, acting through its municipalities.

The question of the time of the payment of wages arose in *Erie R. Co. v. Williams* (p. 195), the New York law requiring semimonthly payment of wages by railroads, etc., being held constitutional by the Supreme Court of the United States. The Supreme Court of Tennessee (*State v. Prudential Coal Co.*, p. 196) held unconstitutional a law of that State providing for a semimonthly pay day for corporations running a commissary or supply store, and providing penalties for

failure to comply with the act, the ground being that since an employer who violated the act might be imprisoned for such violation, the spirit of the law which forbids imprisonment for debt was contravened, so that the statute must fall. The requirement of the redemption of scrip is embodied in a Virginia statute which was before the Supreme Court of the United States in the case *Keokee Consolidated Coke Co. v. Taylor* (p. 190), the constitutionality of a law requiring mining and manufacturing companies to redeem in cash store orders issued by them as payable only in merchandise being affirmed. The same view is taken of a very similar point in *Regan v. Tremont Lumber Co.* (p. 189), the Supreme Court of Louisiana upholding the statute of that State.

Statutes providing penalties for failure of the employer to pay wages due workmen on their discharge were considered in two cases. In *Kirven v. Wilds* (p. 190) the Supreme Court of South Carolina affirmed a judgment for a penalty awarded a discharged workman by the court below, while in *C. C. C. & St. L. R. Co. v. Schuler* (p. 190) the Supreme Court of Indiana declared unconstitutional a statute providing a cumulative penalty for the failure of railroad companies to pay their workmen any wages due on the termination of employment.

A statute of Indiana requiring assignments of wages of a married man to have the written consent of his wife was considered in *C. C. C. & St. L. R. Co. v. Marshall* (p. 188), this provision being sustained as constitutional and of general application, and not restricted to wage brokers only.

That an employer should not be held for the mistaken payment of wages to a person fraudulently holding an identification card, the employer himself not being negligent, was held in *Roumelitis v. M. P. R. Co.* (p. 338). Under this head may be noted the case *Hughes v. Traeger* (p. 56), under which a civil-service employee undertook to prevent the retention of any portion of his salary for the establishment of a pension fund. The provision of the law authorizing such retention was held to be constitutional.

The constitutionality of the mechanics' lien law of Illinois was considered in *Rittenhouse & Embree Co. v. Wm. Wrigley, jr., Co.* (p. 167). The statute undertook to permit a subcontractor to secure a lien the same as a contractor, whether or not the contractor could obtain the lien or was by his contract or conduct divested of a right thereto. This provision of the act was held to be unconstitutional. The question of constitutionality with reference to the mechanics' lien law of Wyoming was raised in the case *Becker v. Hopper* (p. 168). The point involved was as to the right of a subcontractor to a mechanic's lien in the absence of a direct contractual relation with the owner of the property. The court held that the statute giving a lien under such circumstances is valid. Another provision of the same statute

allowed attorneys' fees to the plaintiff or complainant in case he was successful, no reciprocal benefit being allowed a successful defendant. This provision was held to be unconstitutional, as not affording the equal protection of the law to the respective parties. The effect on a subcontractor's rights of a stipulation by a contractor that no mechanics' liens should be filed was before the Supreme Court of Oregon in the case *Hume v. Seattle Dock Co.* (p. 169), the court holding that such stipulation could not preclude the subcontractor's rights. Questions of the lienability of certain classes of material were also considered in this case.

HOURS OF LABOR.

Laws limiting the hours of labor on public works were considered in four cases, the Federal statute of August 1, 1892, being before the court in *Chattanooga & Tennessee River Power Co. v. United States* (p. 119), the defendants claiming that the fact that the lock and dam on which they were engaged would furnish them water power took the work out of the statute. This contention was rejected by the court on the ground that the Government had let the contract for the purpose of procuring a benefit to navigation, and that the incidental use of the power developed did not control. The eight-hour law of Oregon was considered in two cases, in one, *Ex parte Steiner* (p. 116), the superintendent of the State hospital was convicted of violation of the law in requiring a laborer on the asylum farm to work for more than eight hours; in the other case, *Albee v. Weinberger* (p. 117), the mayor of Portland was arrested for a violation of the law in permitting and requiring a fireman and a policeman to work for more than eight hours. The supreme court of the State held that such employment was not a violation of the law. The question of the constitutionality of a Maryland statute applicable to contractors with the city of Baltimore was considered in *Sweetser v. State* (p. 118). The statute was upheld against the contention of depriving contractors of property without due process of law, and of discrimination on account of being applicable only to the city of Baltimore.

Private employment is regulated by a general statute of Oregon limiting to 10 per day the hours of labor of employees in mills, factories, etc. This statute was declared to be constitutional in *State v. Bunting* (p. 120). An ordinance of the city of San Francisco prohibiting work in laundries between the hours of 6 p. m. and 7 a. m. was held by the Supreme Court of California to be constitutional in *Ex parte Wong Wing* (p. 116). The constitutionality of a statute limited in its application to women and children was contested in *Riley v. Massachusetts* (p. 121), the Supreme Court of the United States sustaining its constitutionality, including the detail requiring the posting of a schedule of work time and penalizing any departure therefrom.

The Federal hours of service act for railway employees gave rise to a considerable number of decisions. The question of emergency was considered in *United States v. N. P. R. Co.* (p. 122), in which a train wreck delayed the return of the crew so that it had a six and one-half hours' rest instead of eight hours as required by the statute, the company being held excusable. In *United States v. A. T. & S. F. R. Co.* (p. 130) it was held that a wreck causing a delay after the employee had left a terminal was a justifiable cause for overtime work, even though a lay off might have been made at an intermediate station other than the starting point of the crew; the attempt to haul a damaged car by means of a chain in violation of the statute was held, however, to be such a cause for delay as could have been avoided, and not an emergency within the meaning of the act. Where trains were delayed by a heavy snowstorm and the crews laid off to avoid violation of the 16-hour law, it was held (*N. P. R. Co. v. United States* p. 125) that keeping a fireman on duty to watch and keep up fires was such a violation of the statute as to incur penalties. The same conclusion was reached in *G. N. R. Co. v. United States* (p. 127), where a fireman was required to watch an engine while tied up at a siding, the court holding that such service was within the law governing the "movement" of trains.

A technical violation of the law was admitted by the defendant in *United States v. C. M. & St. P. R. Co.* (p. 131), where the water that had to be used for the engine was warm and impure and the injectors of the engine, though in good condition, failed to work properly, but the situation was held to be one of unavoidable accident. The death of a member of the household of a telegraph operator and the sickness of such operator were held to excuse the railroad company in *United States v. N. Y. O. & W. Ry. Co.* (p. 131) in a proceeding to recover penalties under the hours of service act; so also of the sickness of an operator in the case *United States v. S. P. Co.* (p. 124).

The Federal statute in its application to telegraph operators makes a distinction between offices operated continuously and those operated only during the daytime. It was held in *United States v. A. C. L. R. Co.* (p. 128) that an office regularly kept open from 6.30 a. m. to 10.15 p. m. was one continuously operated, so that the 9-hour limit must control. So in *United States v. M. K. & T. R. Co.* (p. 128) the employment of an operator from 8 a. m. to 12 noon and from 1 p. m. to 7 p. m., and another from 7 p. m. to 12 midnight and from 1 a. m. to 6 a. m., was held to be continuous service within the meaning of the act. A telegraph operator working overtime, although he had instructions not to do so, was held to have violated the law so that his employer was liable in *United States v. O.-W. R. & N. Co.* (p. 129), since it is an absolute and positive duty of the carrier to

enforce the law, and nonperformance is not excused by the plea of reasonable diligence.

A switch tender was held in *M. P. R. Co. v. United States* (p. 129) not to be classed with "operators, train dispatchers, etc.," whose hours of service are limited to 9 per day.

Employees whose train was delayed by waiting while other trains were passing, and who were relieved for an hour and a half in the meantime by a switching crew, were held to be continuously on duty in *United States v. N. P. R. Co.* (p. 133), the court saying that if the rest period could be thus broken up into small fragments there would be no sufficient opportunity for either sleep or rest. In *Osborne's Admr. v. C. N. O. & T. P. R. Co.* (p. 125) an employee riding free under orders, or "deadheading," was held not to be during such time on duty so as to come within the provisions of the 16-hour law.

A New York statute regulating the hours of service of railroad employees was held in *Erie R. Co. v. New York* (p. 123) to be void after the enactment of the Federal statute on the subject, even though the latter law was not to go into effect until a subsequent date, the Supreme Court of the United States holding that when Congress so acts as to indicate its purpose to take charge of a subject within its powers, the regulating power of the State ceases to exist.

FACTORY REGULATIONS.

The constitutionality of the Illinois law requiring certain employers to furnish wash rooms was before the court in *People v. Solomon* (p. 115), the contention being that it was discriminatory as well as unreasonable and ambiguous. These contentions were rejected by the court, and the constitutionality of the law upheld.

RAILROADS.

With a single exception the cases under this head relate to the Federal safety appliance law, the exception being the case *Atlantic C. L. R. Co. v. Georgia* (p. 182), in which the Supreme Court of the United States upheld as constitutional a statute of Georgia prescribing the headlight equipment for railroad locomotives, with certain exceptions as to tramroads, mill roads, etc.

In *Spokane & Inland Empire R. Co. v. United States* (p. 179) the circuit court of appeals held that the Federal safety appliance law was applicable to an interurban electric line. The statute was held also to apply to a terminal or transfer company handling interstate cars (*La Mere v. Ry. Transfer Co.*, p. 181). In *Chicago, B. & Q. R. Co. v. United States* (p. 179) it was held that the prohibition against handling cars with defective coupling apparatus applied to switching operations as well as to long hauls, but that the requirement of the coupling of

the air brakes on 50 per cent of the cars of a train was not applicable in switching movements between yards 2 miles apart. The opposite view was taken with reference to air brakes in *United States v. Pere Marquette R. Co.* (p. 180). In *United States v. C. & O. R. Co.* (p. 183) the repeated handling in switching of a car with a defective apparatus was held to constitute a violation of the statute.

MINES.

A statute of Pennsylvania authorizes and provides for the constitution of a board to decide as to pillars and boundaries between adjacent mining properties. The constitutionality of this act and the status of such a commission were considered in *Plymouth Coal Co. v. Pennsylvania* (p. 170), the Supreme Court of the United States upholding the act as valid. The Ohio Legislature in 1914 provided for the weighing of coal at mines, authorizing the industrial commission of the State to enforce the provisions of the act, and to use its discretion in fixing a standard to be observed. The contention was made that such a law is unconstitutional, interfering with the employers' rights. This contention was rejected in *Rail & River Coal Co. v. Yaple* (p. 171), the presumption being that the commission would proceed in accordance with the terms of the act, while if it should not, an appeal would lie to the courts of the State. The mining law of Alabama, as enacted in 1896-97, prohibited employment of boys under 12 years of age in coal mines in the State. In the code revision the age limit was advanced to 14 years, and the expression "any mine" incorporated in the act. This was held in *Cole v. Sloss-Sheffield Steel & Iron Co.* (p. 113) to make the act applicable to ore mines as well as to coal mines.

RESTRICTIONS OF EMPLOYMENT.

A statute of Texas provided for the establishment of local boards to examine and certify plumbers as a condition precedent to their engaging in their occupation. This statute was held in *Davis v. Holland* (p. 114) to be unconstitutional because permitting all members of a partnership to practice if only one has been certified, while individual plumbers must each secure a license, so that the law was of unequal application. The Supreme Court of the United States in *Smith v. Texas* (p. 178) held unconstitutional a statute of Texas restricting the employment of railroad conductors to persons who had had certain specified experience, the court holding that the requirements were arbitrary and unreasonable, and so in violation of the fourteenth amendment to the Constitution of the United States.

Under this head may be noticed the restriction on the importation under contract, etc., of alien laborers. In *United States v. Dwight*

Mfg. Co. (p. 47) the questions of what constitutes "an offer of employment" within the meaning of the act, and a proper declaration of the violation of the act were discussed at some length, the conclusion being reached that the prosecution had been brought in due form. In *Grant Bros. Construction Co. v. United States*. (p. 48) the liability of the company for the acts of its agents and the propriety of assessing separate penalties for each laborer brought in in violation of the law, even though all came at the same time, were upheld by the Supreme Court of the United States.

Other cases that may be considered here for lack of a better classification relate to the employment of convicts. A Virginia statute, known as the convict lime grinding act, provides for the manufacture and sale of lime, convicts being employed to do the work. In *Shenandoah Lime Co. v. Mann* (p. 58) the constitutionality of this law was upheld as against the contention of the company that the State was thus engaging in internal improvement and using public funds for private purposes in violation of the statute. In *Tennessee C. I. & R. Co. v. Butler* (p. 60) the plaintiff was permitted to recover a balance claimed by him on account of being kept at work under a sentence to work out costs for a longer time than the law permitted.

For the same reason as the above a case involving the constitutionality of a city ordinance prohibiting the keeping open of barber shops on Sunday (*City of Marengo v. Rowland*, p. 186) is noted here, the ordinance in question being declared unconstitutional as discriminating against a single business.

WOMEN AND CHILDREN.

The status of youthful employees and children employed under lawful age is considered under the headings "Liability of employers for injuries to employees" (*Sturges & Burn Mfg. Co. v. Beauchamp*, p. 64; *McCarty v. R. E. Wood Lumber Co.*, p. 284; *Adams v. C. & O. R. Co.*, p. 286); "Workmen's compensation" (*Hillestad v. Industrial Commission*, p. 269); and a case relating to woman labor appears under "Hours of labor" (*Riley v. Massachusetts*, p. 121).

Laws that relate somewhat indirectly to employment, but that contemplate the care of children until they attain a suitable age to work, are those known as "Mothers' pension laws." The Iowa statute on this subject providing for the care of the children of widows was held not to cover the case of the children of a divorced woman (*Debrot v. Marion County*, p. 177).

LIABILITY OF EMPLOYERS FOR INJURIES TO EMPLOYEES.

The validity of an Indiana statute was decided in *Vandalia R. Co. v. Stilwell* (p. 60), the law distinguishing between the defenses available for employers of five or more persons and those employing a less number. The court in this case held such a provision constitutional.

The abrogation of defenses by the statute was also upheld. A like question arose in *Easterling Lumber Co. v. Pierce* (p. 62), in which the company contended that a statute of Mississippi extending to "other corporations and individuals using engines" the liability fixed by the constitution for railroad corporations was invalid. This contention was rejected by the supreme court of the State, and the abrogation of the defense of fellow service upheld. The Supreme Court of Illinois (*Crooks v. Tazewell Coal Co.*, p. 61) had before it the validity of the workmen's compensation act of that State in its effect on the defenses of an employer not accepting its provisions, the court holding that even though the employee had accepted the statute, if the employer rejected it, it did not apply, and damages at common law would be recoverable in a proper case.

The incompetence of a fellow servant was held the cause of liability of the employer in *Walters v. Durham Lumber Co.* (p. 283), the court holding that a workman assumed the risk of negligence of his fellow servant, but not of the negligence of the employer in selecting incompetent employees.

The employing company was held liable for injuries to a boy under 16 years of age employed at a punch press in violation of the statute of Illinois which permits the employment of children over 14, but restricts the employment of those under 16 years of age at designated dangerous employments (*Sturges & Burn Mfg. Co. v. Beauchamp* (p. 64)). The Supreme Court of the United States held that classifications of this nature were within the power of the State, and did not violate the rule as to due process of law. The rule as to minority was before the Supreme Court of West Virginia in *Adams v. C. & O. R. Co.* (p. 286), under the principles of common law. In this case a 17 year old boy was kept on duty as a section hand for about 20 consecutive hours, and the court ruled that on account of his youth he could not be held to be presumed to have fully appreciated the danger of such extraordinary employment. In another case before the same court, *McCarty v. R. E. Wood Lumber Co.* (p. 284), the duty of the employer to instruct an inexperienced youth was emphasized, and the failure to do so was held to charge the employer with liability for a resultant injury.

A number of decisions turned on the failure of the employer to provide or maintain guards for dangerous machinery. Thus in *Pulse v. Spencer* (p. 69) it was held the duty of the employer to see that a guard was in place when it was feasible, even though there might be times when under the statute it might be removed for certain operations, and that the employee in removing the guard at such times was not guilty of negligence as a matter of law. An unguarded wringer or extractor in a laundry was held to be within the provisions of a West Virginia statute requiring machinery to be guarded in manufacturing or mercantile, etc., establishments (*McClary v. Knight*, p. 65). In

Phillips v. Hamilton Brown Shoe Co. (p. 66) the question was considered as to whether an injury not due to contact with an unguarded machine, but due to flying objects thrown from the machine, was within the statute requiring guards for dangerous machinery; the court held that the law covered such a condition, and in the absence of contributory negligence recovery might be had for the employer's negligence in failing to provide the necessary protection. A somewhat similar point was involved in *Smith v. Mt. Clemens Sugar Co.* (p. 68), in which it was contended that a gearing did not require a guard because so far removed from the floor as not to be dangerous. It was held that since employees were required to approach this gearing several times daily, that contention could not be maintained. The question of proximate cause arose in *C. H. & D. R. Co. v. Armuth* (p. 67), an employee's hand having been caught in unguarded cogwheels when it slipped from a lever which he was operating. The failure to guard the machinery and the slipping of the hand were considered to be concurring causes, and the former, being in violation of the statute, was the proximate cause, and entailed liability unless the employee was negligent in permitting his hand to slip.

Negligence in the discharge of the common-law duty of warning the employee of new dangers was held to make the employer liable for injuries to a strike guard sent to a point to which deputy marshals had also been summoned, neither party being informed of the other's presence or purpose (*McCalman v. I. C. R. Co.*, p. 290).

Several liability cases involved the construction of statutes regulating the operation of mines. Thus the Supreme Court of the United States (*Myers v. Pittsburgh Coal Co.*, p. 70) reversed the judgment of the circuit court of appeals and affirmed the judgment of the trial court in a case involving the liability of the employing company for the death of a man from electric shock, the court holding that the employment of a certified foreman did not relieve the company from responsibility where the electrical installation was not in charge of such foreman. In *Humphreys v. Raleigh Coal & Coke Co.* (p. 70) the Supreme Court of West Virginia reached the same conclusion in a very similar case, the court holding that the employment of a mine foreman was not intended to absolve the employer from his duty as to equipment and maintenance. Failure to employ a mining boss to inspect the mine was held to be the proximate cause of an injury in *Baisdrengchien v. M. K. & T. R. Co.* (p. 71); so also in *Piazzì v. Kerens-Donnewald Coal Co.* (p. 72), where, though an inspector was employed, he had not marked a dangerous place. The mine law of Oklahoma was held in *Big Jack Mining Co. v. Parkinson* (p. 72) to apply to lead and zinc mines no less than to coal mines. Violation of the statute as to hoisting was considered by the Supreme Court of Montana, the court finding that under the rule the deceased

workman was, in effect, a station tender and that his death was due to his own negligence, so that no recovery could be had (*Maronen v. Anaconda Copper Mining Co.*; p. 73).

The regulation of railroad operations by statute afforded the basis for a number of decisions that have been reproduced, the principal statute taken account of being the Federal liability act of 1908. The hours of service law and the safety appliance laws are also involved in some cases. The liability act referred to abrogates the defense of assumption of risk where the violation of safety statutes contributes to the injuries complained of, but the defense was held to be available in *Farley v. N. Y. N. H. & H. R. Co.* (p. 81), where a locomotive engineer was killed by contact with electric wires, he being held to have assumed the risk. The question of contributory negligence was considered in *Pennsylvania Co. v. Cole* (p. 82), in which the rule for the comparison of the negligence of the employer and the contributory negligence of the employee was discussed.

The Supreme Court of the United States (*N. C. R. Co. v. Zachary*, p. 83) insisted on the exclusive application of the Federal statute to cases coming within its scope; an employee absent for a brief time from his engine on a personal errand was held nevertheless to be on duty at the time and engaged in interstate commerce. The relationship of Federal and State statutes is also considered in *Jones v. C. & W. C. R. Co.* (p. 78), the result in the instant case being that no recovery could be had for the death of a man who left no dependents, though if the State law had prevailed relatives might have recovered damages. So in *Taylor v. Taylor* (p. 79), where the father of a deceased workman sued to procure the paying over to himself in accordance with a statute of New York of one-half the damages recovered by the widow under the Federal statute, the Supreme Court of the United States held that the State law could not be effective, the Federal statute controlling, and reversed a contrary judgment of the New York Court of Appeals. In *Wabash R. Co. v. Hayes* (p. 77) an action brought under the Federal act but shown on trial not to involve an interstate question, was decided in the same suit under the common law in force in the State, such proceeding being approved by the Supreme Court. The relation of State and Federal statutes in their attempts to secure the use of safety appliances was passed upon by the Supreme Court of the United States in a case (*S. A. L. R. Co. v. Horton*, p. 80) in which a judgment of the Supreme Court of North Carolina that sought to make operative a State statute was reversed, the Supreme Court holding that the Federal law must be considered as excluding supplementary legislation in that field. Negligence of the employer in his failure to comply with safety appliance laws was offered as ground for recovery in *Pennell v. P. & R. R. Co.* (p. 102), the Supreme Court of the United States holding that the statute requiring

automatic couplers did not require such a device between the tender and engine, so that the company was not liable for a failure to provide one. In *Dodge v. C. G. W. R. Co.* (p. 102) a defective coupling at the rear of the last car of a train, though perhaps indirectly responsible for a derailment, was held not to be a violation of the safety appliance act. The status of a workman riding home was also considered in this case, the court holding that he was in the present instance a mere licensee, exercising at his own risk the privilege that he was taking.

The provisions of the Federal statute as to accepting benefits from relief associations were considered in *Hogarty v. P. & R. R. Co.* (p. 84), the case having been first tried under the State law, the trial resulting in a verdict in favor of the defendant company. The Supreme Court of Pennsylvania held that though the Federal statute was not brought into the case until the special defense was entered upon, the plaintiff was entitled to a trial under that statute under the rule of the Supreme Court of the United States that it must be considered as enforceable by the State courts the same as State legislation, and under it the acceptance of relief benefits would not exempt from the right to further recovery. Failure of the plaintiff to expressly base his case on the Federal statute was held by the Supreme Court of the United States (*G. T. W. R. Co. v. Lindsay*, p. 99) not to prevent a recovery under the act. Another point considered in this case was as to the doctrine of comparative negligence laid down by the act in question, the court holding that contributory negligence on the part of the employee would in no wise diminish the recovery where the injury is due to the employer's failure to conform to the Federal safety laws. The acceptance of relief benefits from one of two parties charged with liability for an injury was involved in *Wagner v. C. & A. R. Co.* (p. 100). The company sued was not the plaintiff's employer, but was the owner of the tracks over which his employer's train was running at the time of the injury. The Federal statute therefore did not apply as between the present parties, since the relation of employer and employee did not exist. It did apply, however, between the plaintiff and his employer company, which had paid relief benefits and taken a purported release from further liability, which release the present defendant sought to present as a bar to further action. Since under the Federal statute such payments of relief benefits would not bar an action as against an employer, the court held that it was invalid as against the plaintiff in the present case.

The absence of the proof of negligence on the part of the company, as viewed by the Court of Appeals of Kentucky, led to a reversal of a judgment of the trial court in *C. N. O. & T. P. R. Co. v. Swann's Admx.* (p. 98); while in *Reeve v. N. P. R. Co.* (p. 99) the term "negligence" as used in the act was held to mean negligence in the performance of

some duty, so that an injury to a workman caused by horseplay of fellow employees was held not to give rise to an action.

A point in frequent litigation is as to the scope of the Federal statute, or the limits set to its application by the term "interstate commerce." Thus a brakeman setting an intrastate car into an interstate train was held by the Supreme Court of Kansas to be within the act. The car in question had a defective coupler, and the point was raised as to the application of the Federal safety appliance law to it; the court held that the law was intended to embrace all cars used on railroads which are highways of interstate commerce (*Thornbro v. K. C. M. & O. R. Co.*, p. 85). Other employees held by the different courts to be within the act were a blacksmith repairing cars used in interstate commerce (*Opsahl v. N. P. R. Co.*, p. 94); a boiler maker repairing an engine used in interstate commerce (*Law v. I. C. R. Co.*, p. 94); a telegraph lineman engaged in repairing lines used in directing the operation of interstate trains (*Deal v. Coal & Coke R. Co.*, p. 95); an engineer going into a roundhouse to look after repairs to his engine used on an interstate run (*Padgett v. S. A. L. R. Co.*, p. 90); an engineer testing his engine after repairs prior to going on an interstate run (*Lloyd v. S. R. Co.*, p. 96); a workman installing a block-signal system (*Saunders v. S. R. Co.*, p. 92); an employee returning from work on a block-signal system riding on a motor tricycle to his boarding place in cars furnished by the company (*Grow v. O. S. L. R. Co.*, p. 92); a workman engaged in building an addition to a freight shed (*Eng v. S. P. Co.*, p. 86); an employee carrying coal to heat a repair shop (*Cousins v. I. C. R. Co.*, p. 88); a track worker injured while asleep in his shanty car on a sidetrack (*Sanders v. C. & W. C. R. Co.*, p. 89); and employees engaged in weighing empty cars after interstate transportation to determine the net weight of contents (*Wheeling Terminal Co. v. Russell*, p. 97). The following were held to be excluded: A workman engaged on the construction of a new bridge on a cut-off (*Bravis v. C. M. & St. P. R. Co.*, p. 87); a tunnel worker on a cut-off not yet in use (*Jackson v. C. M. & St. P. R. Co.*, p. 88); a fireman on a switch engine handling interstate and intrastate traffic indiscriminately, at the time of the injury moving several cars loaded with freight wholly intrastate (*I. C. R. Co. v. Behrens*, p. 91); and a hostler in a railroad roundhouse killed by the explosion of the boiler of a locomotive whose last run was intrastate (*La Casse v. N. O. T. & M. R. Co.*, p. 96). The Federal statute was also held not to apply to the operations of a private road handling logs to be sent to mills within the State of origin (*Bay v. Merrill & Ring Lumber Co.*, p. 97).

The question of beneficiaries under the act was considered in *Kenney v. S. A. L. R. Co.* (p. 81), the Supreme Court of North Carolina holding that a statute of that State defining the rights of inheritance

from illegitimate children determined who might be beneficiaries under the Federal act.

State statutes regulating railway service present a few points that were considered of importance, among these being a case (*George v. Q. O. & K. C. R. Co.*, p. 75) in which the Missouri statute requiring frogs, etc., in yards to be blocked as a matter of safety to persons employed in such yards was construed. Against the company's contention that a sidetrack at a station was not a yard within the meaning of the statute, the court held that the portion of the tracks around every station used for the purpose of switching or placing cars is a yard. Another definition required was that of the term "car," as used in a Florida statute which makes the company liable for injuries caused by agents or coemployees in running cars or other machinery; in *McGrady v. C. H. & N. R. Co.* (p. 75) a hand car was held to be a car within the meaning of the act, and the work of placing it on a track was declared a part of the running of such car. In *Hughes v. I. U. T. Co.* (p. 77) the fellow-servant law of Indiana applicable to railroads was held not to cover electric roads. A somewhat different view was taken in a case (*Spokane & I. E. R. Co. v. Campbell*, p. 106) in which the Federal safety appliance law was held to apply to electric trains. (See also *Spokane & I. E. R. Co. v. United States*, p. 179.) The train in question was in interstate use, and a failure to supply the equipment of train brakes, etc., was held to fix the employer's liability for an injury due to insufficient brakes. That a laborer unloading ties on the roadbed for an extension of a railroad line in process of construction was engaged in the operation of the railroad within the terms of the Missouri statute was held in *Sartain v. J. C. T. Co.* (p. 104).

A Pennsylvania statute fixes the liability of the employer where injury results from negligent orders to which the subordinate was bound to conform. This statute was held to apply in *Ainsley v. P. C. C. & St. L. R. Co.* (p. 105), where a brakeman went down the steps of a moving car in an effort to locate the defect in a brake that was not working properly; so also in *Chicago & Erie R. Co. v. Lain* (p. 105), where a similar statute of Indiana was held to support recovery in a case in which the plaintiff was injured while occupying a position of danger in accordance with his foreman's orders. The point was also made that the injured workman, being what is known as a yard and bridge man, was not engaged in the movement of trains and so was not within the act. This contention the court rejected, stating that since his duties exposed him to the dangers of the movement of trains, he was protected by the statute. At common law also the employee may depend on the employer's orders and recover in case injury follows negligence in this respect (*Magnuson v. MacAdam*, p. 285).

The United States Supreme Court upheld a judgment affirmed by the Georgia Court of Appeals rendered under an Alabama statute which fixed the liability of the employer, but provided that actions under it must be brought in the courts of the State of Alabama and not elsewhere. The Georgia courts held that they could take jurisdiction under the act regardless of this limitation, which view was approved by the Supreme Court (*Tennessee C. I. & R. Co. v. George*, p. 107).

The violation of a city ordinance limiting the speed of trains through the municipality was held in *Wabash R. Co. v. Gretzinger* (p. 76) to be the proximate cause of the death of a freight conductor whose train was on a sidetrack, the switch leading to which had been opened by some unknown person after having been closed and locked.

Negligence in failing to properly and safely guard machinery to prevent injury to employees was claimed in *Byland v. E. I. du Pont de Nemours Powder Co.* (p. 73), the negligence consisting in allowing metallic nuts to fall into a powder-mixing machine, resulting in an explosion in which the plaintiff was injured. The connection in this case was held not to be direct enough to bring it within the act. It was also held that a *prima facie* case of negligence could not be made in a liability suit merely by reliance on the doctrine of *res ipsa loquitur*.

The necessity of an adequate compliance with the requirements prescribed by statute was emphasized in *McClagherty v. Rogue River Electric Co.* (p. 108), the statute in question being one regulating electric installations. In *Rosholt v. Worden-Allen Co.* (p. 110) the distinction between the common law and the statute applicable to the case in hand is pointed out, and the liability of the company was then affirmed because of its failure to make an elevated runway safe within the meaning of the statute. A similar law of New York was under consideration in *Bornhoff v. Fischer* (p. 111), the duty of the employer to furnish a proper scaffolding being held to be nondelegable.

If a machine was known to be dangerous, even if of an approved type and make, the employer may still be held to liability for failure to make it safe (*Ainsley v. John L. Roper Lumber Co.*, p. 287).

The negligence of a repair man in taking a place of danger without notice to persons moving trains on the tracks in the vicinity was held to bar a recovery for his death in *Stone v. A. C. L. R. Co.* (p. 286).

Somewhat technical features were considered in cases decided by the highest courts of Massachusetts and New York, the question of sufficiency of notice being decided in the plaintiff's favor in the former court in *Meniz v. Quissett Mills* (p. 112), the attorneys retained by the plaintiff to assist him, having written a letter to the defendant, within the proper period, stating that they had been retained to prosecute the case, mentioning the circumstances, time, and place of the injury. In *Rodzborski v. American Sugar Refining Co.* (p. 112) the New York

Court of Appeals held that a letter simply asking that the case of the injured man be investigated, without statement as to the cause of the injury, was not sufficient compliance with the terms of the statute.

The right of an injured employee to elect his remedy after the injury was maintained by the Supreme Court of Arizona in *Consolidated Arizona Smelting Co. v. Ujack* (p. 109), that State having a workmen's compensation act and a liability statute, while a common-law action was held also to be possible. The power of a claimant to make a choice of rights was before the Supreme Court of Washington in *Longfellow v. City of Seattle* (p. 74). In this case the widow of a city fireman had claimed and procured the allowance of a pension for herself and minor daughter under a State law and subsequently sued for damages. This action was held to be barred by the acceptance of the pension benefits, this ruling applying to the mother; as to the daughter, who had no rights under the pension fund, it was held that she might proceed in an action to recover damages.

That the work of keeping clean the streets of a city is a governmental function in the exercise of which a municipality will not be liable for injuries to an employee was held in *Mayor and Aldermen of City of Savannah v. Jordan* (p. 284), even though the superiors of the injured workman knew of the defective condition of the instrumentality causing the injury.

WORKMEN'S COMPENSATION.

As indicated in the introduction, the importance of securing authoritative definitions of the terms used in this new class of laws is doubtless responsible for the fact that a considerable number of cases have been brought to the courts of last resort under these acts. Administration by commissions, and the simplification of legal processes where actions at law are resorted to, have certainly done much to relieve the courts of the burden of litigation in damage suits, and the cases appearing in the Reporter System for the year are practically all presented in this bulletin with greater or less fullness. Questions of constitutionality have been raised in comparatively few cases, the courts in the larger number of the States in which compensation laws have been enacted having already passed upon the general question. This question was raised, however, in a case under the Illinois statute (*Deibeikis v. Link-Belt Co.*, p. 216), in which the plaintiff sought to recover in a suit at law even though both he and his employer had accepted the terms of the elective compensation act of the State, and certain payments had been made thereunder. Seven main contentions were made against the act, all being overruled by the court, largely on the ground that the act was elective in form and effect—a fact which even the abrogation of defenses in cases where it was not accepted did not modify. The Minnesota statute was also

called in question, a plaintiff employee claiming that it violated the provisions of the fifth and fourteenth amendments to the Constitution of the United States as to protection of rights and equality before the law (*Matheson v. Minneapolis Street Railway Co.*, p. 218). The law was sustained in the present instance largely on the same grounds as in the *Deibeikis* case, the court ruling that the classifications and exclusions found in the act did not invalidate it. The Kansas statute also (*Shade v. Ash Grove Lime & Portland Cement Co.*, p. 224) was upheld against similar contentions, and the remedy under it was declared exclusive, emphasis being laid, as in the preceding cases, on the elective nature of the law as relieving it from the charge of depriving persons by statute of their constitutional rights.

The opposite view was reached by the Kentucky Court of Appeals in *Kentucky State Journal Co. v. Workmen's Compensation Board* (p. 197). This court held that the abrogation of defenses made the act in fact compulsory, even though elective in form, thus in effect establishing a limitation on recovery for injuries resulting in death or for injuries to personal property, in violation of the State constitution. It may be noted that in this position the court formally rejected the views of the courts of last resort of a number of States, distinguishing statutory provisions in some cases, and in others pointing out the absence of constitutional provisions similar to those existing in Kentucky. On a petition for rehearing, which was rejected, specific suggestions were made as to points to be modified in order to make such a law constitutional.

Single points were raised in *Jeffrey Mfg. Co. v. Blagg* (p. 203), in which the constitutionality of the Ohio statute was sustained by the Supreme Court of the United States on the point of the exclusion of small employers from the provisions of the act abrogating defenses; in *Young v. Duncan* (p. 221), in which the form of election under the Massachusetts statute was claimed to deprive the employee of a right to trial by jury and of property rights, the court overruling this contention; and in *Huyett v. P. R. Co.* (p. 225), in which a technical question as to the title was raised, the act being sustained. In this last case also it was decided that the term "wages" as used in the act meant actual earnings at the time of the injury, and not any less or greater amount than might have been customary.

Among the specific terms coming up for definition is the word "accident," this expression being held in *Liondale Bleach, Dye & Paint Works v. Riker* (p. 205) to imply a degree of definiteness as to the specific time or occasion of the occurrence. This was a case in which the compensation was claimed for an eczema possibly due to working in acids. The Massachusetts statute substitutes for the word "accident" the expression "personal injury," and this was held

in *Johnson v. London Guarantee & Accident Co.* (p. 259) to cover the case of a workman who had become affected with lead poisoning through continuous exposure. Compensation was also allowed where a workman suffered from optic neuritis induced by poisonous coal-tar gases to which he was exposed in inspecting processes of manufacture (In re Hurle, p. 260). The Michigan statute, on the other hand, was held in *Adams v. Acme White Lead & Color Works* (p. 258) not to include a case of lead poisoning, even though the word "accident" was not used, the court holding that the term "personal injury" was evidently meant by the legislature to cover only such cases as could be sued for under previous statutes, which related to accidents only. Under the Washington statute it was held (*Zappala v. Industrial Insurance Commission*, p. 240) that a hernia claimed to have been caused by severe strain was the result of a "fortuitous event" for which compensation should be paid, the court overruling in this instance the finding of the commission.

The statutes are not uniform in the form of expression as to whether the injury or accident shall arise out of and in the course of employment. In *Henry Steers, Inc., v. Dunnewald* (p. 206) an accident that might by inference be supposed to have occurred in the course of employment was held not to arise out of it, so that no recovery could be had. The employee in this instance was drowned probably while on his way to work and near the place of his employment. Under the same (New Jersey) statute it was held that circumstantial evidence might support the inference of an injury in the course of employment (*Muzik v. Erie R. Co.*, p. 249). Compensation was allowed under the same statute in *Terlecki v. Strauss* (p. 241), a case in which the injury occurred while an employee was combing her hair to remove particles of wool at the conclusion of the day's work, the hair being caught in moving machinery. Anchylosis due to an infection following the improper treatment of a fracture was held in *Newcomb v. Albertson* (p. 247) to be a result of the accident so as to allow compensation under the New Jersey law. Where the injury occurred as the result of using a forbidden agency, the Supreme Court of New Jersey (*Reimers v. Proctor Pub. Co.*, p. 250) held that it was not an injury arising out of and in the course of the employment. Compensation was permitted under this act in a case in which a workman had apparently aggravated a preexisting condition of disease by forcible exertion, death ensuing (*Voorhees v. Smith Schoonmaker Co.*, p. 248).

The Wisconsin statute provides compensation where injury occurs while one is "performing service growing out of and incidental to his employment." This was held (*City of Milwaukee v. Althoff*, p. 266) to cover an injury to a workman on the way to the place of his employment after he had received instructions from his foreman

where to go. Under the Michigan statute a workman leaving a roof for lunch at the invitation of his employer, and injured while coming down in a way of his own choosing, was held to be within the protection of the act, even though the other workmen came safely by another course (*Clem v. Chalmers Motor Co.*, p. 242). The question of willful and intentional misconduct was raised in this case, but the court held that there was no proof of such conduct as to be a bar to the claim. In another case under this statute (*Hills v. Blair*, p. 243) a section hand on his way home from his working place at noon was held not to be within the protection of the act, as he had, in effect, left the premises of his employer, though killed in some unexplained manner along the right of way of the railroad. The Michigan statute was held (*Rayner v. Sligh Furniture Co.*, p. 244) to cover the case of an employee injured while running to punch the time clock when the noon whistle blew, the rules requiring employees to punch the clock before going out. Another case under this statute was that of *Bayne v. Riverside Storage & Cartage Co.* (p. 245), where the question of causal connection between an alleged sprain and death from pneumonia was decided favorably to the claimant, the court reaching this conclusion largely on the finding of fact by the State compensation commission.

Under the Massachusetts law the injury must arise out of and in course of employment. In the case *In re Sundine* (p. 244) a girl injured while going out to lunch by the use of the only means of access to the workshop was held to come within the act; so also of an employee who was injured while riding from his place of work in a wagon furnished by the employer (*In re Donovan*, p. 245). In the case *Milliken v. A. Towle & Co.* (p. 246) the Massachusetts law was held not to cover the case of a teamster who, due to an injury of some years' standing, showed evidence of lapse of memory and wandered aimlessly about, finally falling into a swamp, where he contracted pneumonia and died. The West Virginia statute was construed in *De Constantin v. Public Service Commission* (p. 249) not to cover the case of a workman employed on construction work of a railway and killed by a train while on his way to work, the evidence showing that the route used by him was not the only or even the proper means of access to his place of employment.

Casual employees are excluded from the benefits in most of the States, this condition under the Massachusetts law having been changed by an amendment of 1914. The case *In re Cheevers* (p. 213) was decided under the old law, and an independent teamster occasionally employed by a coal dealer was held to be engaged in casual employment when he worked scattered days in February, 1913, his last previous employment being a few days in February, 1912; so also in a case under the same act (*In re Gaynor*, p. 214), the employee in this case being a waiter whose services were employed for but a

single day, he having never worked for the same employer before. Where, however, a workman was regularly employed to do a certain class of work and was ordered to do the same kind of work under slightly different conditions, he was held to be under the protection of this act (*In re Howard*, p. 213). A pieceworker in a tannery, injured on the first day of his employment under an arrangement as to continuance that was somewhat indefinite, was held by the Supreme Court of New Jersey not to be a casual employee, since his work was of the same general kind as the business of the establishment (*Schaeffer v. De Grottola*, p. 214); so also of a longshoreman who was killed two hours after beginning work under a new employer, the court holding that the custom of hiring longshoremen, subjecting them to frequent changes of employers, did not render their employment casual, since it was a particular part of a service recurring with some regularity and fair prospect of continuance (*Sabella v. Brasileiro*, p. 214).

Questions of dependency arose in several cases under the Massachusetts law. In the case *In re Gallagher* (p. 227) a woman, living apart from her husband for justifiable cause and receiving partial support from him, was held not to be presumptively wholly dependent upon him under the earlier form of the law. An amendment of 1914 declares in favor of such presumption, but this amendment did not affect the present case. So also in the case *In re Nelson* (p. 227), where the wife had lived apart from her husband several times for varying periods, and was so living at the time of the death of her husband, though there had been no talk of permanent separation or divorce. A wife living apart from her husband and receiving no support took nothing in the case *In re Bentley* (p. 226), while a partially dependent child received an award of a limited amount. A daughter capable of self-support, but living with her father and caring for him from a sense of duty, receiving most of his wages, was held entitled to compensation under the Massachusetts act (*In re Herrick*, p. 226). Parents and brothers and sisters of a minor whose earnings were contributed to the support of the family were held to be the dependents of such minor (*In re Murphy*, p. 229). The Supreme Court of Rhode Island affirmed a decree allowing no compensation for the death of a minor (*Dazy v. Apponaug Co.*, p. 228), it not appearing that the contributions of the deceased son were required to provide the family with the necessities of life. It was held in *King v. Viscoloid Co.* (p. 264) that the mother of a minor son might sue at common law for the loss of his services even though he had taken compensation under the Massachusetts statute.

The question of incapacity was passed on by the Supreme Court of Massachusetts in a case (*In re Sullivan*, p. 241) in which a workman who had lost an arm as the result of an injury reported himself unable

to secure work for some six months after his recovery from the wound, although he tried to do so. The court held that he was entitled to compensation until work was secured, since the inability to obtain work resulted directly from the injury. The same view was taken in *Duprey v. Maryland Casualty Co.* (p. 268), where a workman who was able to work only while sitting had not been able to secure such employment, though competent to render it if obtainable—this in the face of an agreement to accept a lower award. The same court held that a hand was “incapable of use” so as to entitle the workman to compensation as for the loss of a hand, where the injured hand could be used only as a hook on account of injuries to the flexor tendons (*In re Meley*, p. 241). The New Jersey Supreme Court had before it a question involving an injury to the leg of a plumber which disabled him from following his occupation. The lower court awarded a benefit for total disability, involving the payment of benefits for 400 weeks. This was reversed by the supreme court (*Bateman Mfg. Co. v. Smith*, p. 256), the term being reduced to 175 weeks, which is the period specified for the loss of a leg. The injured man in this case was 73 years of age, and the fracture refused to knit on account of his age. The Wisconsin statute takes note of advanced years and reduces the amount of compensation payable to aged employees in cases of permanent injury. This was held in *City of Milwaukee v. Ritzow* (p. 257) not to call for a reduction of death benefits in a case where a man 80 years of age was killed in the course of his employment. The statute of Washington provides for permanent partial disability, limiting the amount of the benefits payable therefor, and makes a separate provision for permanent total disability, defining the same. In *Sinnes v. Daggett* (p. 257) the supreme court of the State affirmed an award for permanent partial disability in the case of a man who had lost several fingers of each hand as against his claim that he was totally disabled.

Closely related to the foregoing is the determination of the amount of compensation. A case before the Supreme Court of New Jersey involved the right of a workman to compensation for the permanent impairment of function of an arm, without, however, affecting his earning capacity. The award was made (*De Zeng Standard Co. v. Pressey*, p. 207) on the basis of the relation of the degree of disability to the total loss of function, the court rejecting the contention that there could be no statutory disability unless the earnings have been impaired. Another case before this court involved the decision of the question of relative disability, the injury being to the elbow of the right arm and causing loss of motion. An award was made (*Barbour Co. v. Hagerty*, p. 209) as for the loss of the arm. This was reversed by the supreme court, with instructions to take note of any payments that had been made from insurance funds secured by the

employer. *O'Connell v. Simms Magneto Co.* (p. 209) was another case before the New Jersey court where multiple injuries were allowed for, the award being the total of the amounts for each injury. This judgment was reversed by the supreme court on the ground that the disabilities were not such a proportion of a total disability as to justify the award made. The method of procedure was principally involved in another case under the New Jersey statute (*Mockett v. Ashton*, p. 207), where a lump sum had been awarded without an indication as to what continuing payments would have been proper, the supreme court reversing the finding on the ground that there was no sufficient support for it under the statute. A case involving elements similar to the *Pressey* case above arose under the Wisconsin statute (*International Harvester Co. v. Industrial Commission*, p. 210), in which there was permanent impairment of the sight of an eye but no reduction in earnings. An award had been made by the commission on the ground of permanent partial disability, based on the likelihood of his difficulty in securing employment on account of defective sight. The supreme court of the State reversed this finding, holding that there was no material evidence on which to base the ruling of the commission.

The Michigan statute contains a schedule for certain specific injuries, fixing the term during which disability shall be deemed to exist, that for the loss of a foot being 125 weeks. In *Limron v. Blair* (p. 211) the court reversed an award allowing compensation during the time of actual total disability plus 125 weeks, to commence at the conclusion thereof, but deducting 6 weeks for the time when the foot was amputated, the ground being that the total period could not exceed 125 weeks unless his total disability lasted longer, since the statute "speaks in terms of disability" and does not provide specific indemnities. The Massachusetts statute provides for specific losses certain compensation "in addition to all other compensation." This was held (*In re Nichols*, p. 213) to sustain a finding for separate allowances for the loss of a finger and for the death of the workman from blood poisoning which subsequently developed; so also where there was permanent total disability for which compensation was recoverable, separate full compensation for the death which ensued being also due (*In re Burns*, p. 212). In case of permanent injury of a phalange of a finger not resulting in permanent incapacity no compensation was allowed under the Massachusetts act authorizing compensation where injury produces incapacity for use (*In re Ethier*, p. 212).

The distribution of the amount of an award for death was before the Supreme Court of Massachusetts (*In re Janes*, p. 230). There were two minor beneficiaries, the deceased father being a widower at the time of his death. One child also died about a week after the father's

death, and the compensation awarded was ordered to be paid one-half to the guardian of the survivor and one-half to the administrator of the deceased child, the supreme court holding that the insurer had no right of appeal in the matter, as its liability was not affected. The computation of weekly payments in the case of a workman who was employed only a part of the year was passed upon by the Supreme Court of Michigan in the case *Andrejwski v. Wolverine Coal Co.* (p. 234), the court holding that the average weekly wages must be arrived at in such a case by dividing the actual average annual earnings by 52, the method of computation by multiplying a day's earnings by 300, prescribed for certain cases as a method of determining annual earnings, not being applicable under the circumstances.

The Massachusetts law requires medical and surgical services to be furnished injured workmen, and this duty was held (*In re Panasuk*, p. 253) to call for an active effort to render the necessary aid, not being discharged by the mere publishing of lists of doctors. In *Jendrus v. Detroit Steel Products Co.* (p. 253) the Supreme Court of Michigan held that the refusal of an employee to allow an operation when first proposed did not necessarily debar a claim for compensation, the injured man being ignorant and unacquainted with the English language. It was pointed out, too, that there was no evidence that an immediate submission to the operation would have secured recovery.

The question of the serious and willful misconduct of a workman such as would debar recovery was considered by the Supreme Court of Massachusetts (*In re Nickerson*, p. 265), the court holding that the term meant more than negligence or even gross negligence, and that thoughtless acts, not deliberate, would not constitute such conduct. The Ohio law as originally enacted permitted an action for damages independent of the compensation act where the injury was due to the willful act of the employer. This was held (*McWeeny v. Standard Boiler & Plate Co.*, p. 232) to permit recovery where the foreman gave negligent orders and insisted on obedience to them in the face of protest. This subject is now strictly regulated by statute.

The question of election was before the Supreme Court of Rhode Island (*Coakley v. Mason Mfg. Co.*, p. 204), the company having accepted the provisions of the act on September 26, 1912, the act coming into effect five days later. Against the plaintiff's contention that an acceptance would not be valid before the act became effective, the court ruled that the rights of the parties were determined by this election. Where acceptance of the compensation law is presumed in the absence of a contrary election, the employee claiming benefits under the act is not required to show that no such election has been made, but the fact must be offered by the employer as an affirmative defense (*Gorrell v. Battelle*, p. 230). This case also presented questions of incapacity, the court ruling that the act contemplates com-

compensation for incapacity due to injury, where the loss manifests itself in inability to perform obtainable work or inability to secure work. That special notice of refusal to accept the terms of a compensation act must be given to the guardian of a minor under the New Jersey statute was held in *Troth v. Millville Bottle Works* (p. 231), general notice not being sufficient. An earlier opinion was cited in this case affirming the applicability of the statute to preexisting contracts. A claimant who had received benefits under the compensation law of Washington was held (*The Fred E. Sander*, p. 232) not to be entitled to recover in an action in admiralty. In an earlier proceeding by the same claimant, seeking to recover in admiralty for injuries (*The Fred E. Sander*, p. 265), the defense was interposed that the State compensation act had abolished actions for personal injuries. The court held that the State could not limit the jurisdiction of courts of admiralty over maritime torts, and overruled the exceptions, the acceptance of benefits not having appeared in this proceeding. That the compensation law of Kansas provides an exclusive remedy where it has been accepted was held in *McRoberts v. National Zinc Co.* (p. 236), the plaintiff having sought to secure both benefits under the compensation statute and damages at common law. The difference between an award of damages and an allowance of compensation was also pointed out. The Washington statute permits damage suits against an employer who is in default in payments to the State accident fund, but this was held (*Barrett v. Gray's Harbor Commercial Co.*, p. 206) not to validate an action for injuries by a workman in a case where the accident happened during the 30-day period allowed for the making good of a shortage, the payment having been made within the allowed time.

Cases involving the negligence of a third party were considered in a few instances. In *Meese v. N. P. R. Co.* (p. 250), the death of a brewery employee was occasioned by the negligence of a railroad company, and against the contention that the only recovery open to the wife and children was under the workmen's compensation act of Washington, it was held that this act had no relation to cases involving the liability of persons not in the status of employer and employee, the "Lord Campbell's Act" of the State being unaffected thereby. A different situation was presented in a New Jersey case (*Newark Paving Co. v. Klotz*, p. 251), where a workman was killed in the course of his employment by the negligence of a third party, the payment of damages and the securing of a release by such third party being held not in any way to affect the statutory right of the claimants to compensation. A very similar condition was considered by the Supreme Court of Massachusetts in the case *In re Cripp* (p. 266), where a teamster was injured by the negligence of a street railway company, which immediately settled with him and secured a release.

The injuries resulted subsequently in death, and it was held that the widow's rights under the compensation act were independent of anything that the workman might have done with respect to his personal injuries. The Wisconsin statute contains a provision for the subrogation to the employer of an injured employee's right of action against a third party occasioning injury. In *McGarvey v. Independent Oil & Grease Co.* (p. 267), the employer, for a consideration, assigned this right of action to the employee, whom it had already compensated. The court held in this case that the employee was entitled to sue alone without the employer as a party plaintiff.

The question of classification was passed upon by the Supreme Court of Washington in *State v. C. M. & P. S. R. Co.* (p. 215), the industrial insurance department of the State having levied a premium rate for tunnel construction work in the instance in question, and the company contending that the lower rate governing steam railroad construction work should apply. The supreme court held that the employments were clearly separable and the "enterprise classification" would not govern. The Washington statute applies to "extra-hazardous" occupations, making an enumeration and concluding that if there should be or arise any other extrahazardous occupation or work it should come under the act. In *Wendt v. Industrial Insurance Commission* (p. 238), a carpenter placing shelving in a store and attempting to sharpen his chisel in a workshop belonging to the employer in another line, was held to be engaged in extrahazardous employment and within the provisions of the act, overruling the finding of the commission. That a farmer may accept the provisions of the Massachusetts statute as to certain classes of employees without obligating himself as to all was held in the case *In re Keaney* (p. 239). A child employed in his father's mill in violation of the statute limiting the age at which children may be so employed is not a workman within the provisions of the Washington compensation act so as to permit recovery from the State accident fund (*Hillestad v. Industrial Commission*, p. 269). In *Connole v. N. & W. R. Co.* (p. 263), the Ohio statute was construed as not applicable to railroad and other employees in the absence of active election in behalf of workmen working only in the State, approved by the State liability board of awards; the provision of the statute abrogating defenses was held not to apply in this instance. The New Jersey compensation law excepts nonresident alien dependents from its benefits. The court of errors and appeals of that State held (*Gregutis v. Waclark Wire Works*, p. 255) that since the remedy of the employee, if he had survived, would have been under the compensation act, the case was governed by that act, and no cause in favor of nonresident alien suitors existed under the death act of the State.

It was held in *American Radiator Co. v. Rogge* (p. 226) that the New Jersey law covered all accidents occurring in that State, regardless of the place of the contract of employment.

The power of a court to issue letters rogatory to obtain the testimony of foreign witnesses for hearings before the State industrial board was denied by the Supreme Court of Massachusetts (*In re Martinelli*, p. 229), since the relationship of the court to the industrial board did not warrant such exercise of power. The relationship of the industrial board of Illinois to the courts was considered in *Courter v. Simpson Construction Co.* (p. 264), the statute undertaking to provide a review of the decision of the industrial board by the supreme court of the State on a writ of certiorari. This detail of the statute was held to be invalid, since its effect would be to violate a constitutional provision. It was further held that the lower courts could not be deprived of their power to review the proceedings of the board, and that this might be done by writs of certiorari from the circuit courts. Under the provisions of the Massachusetts statute it was held (*In re Diaz*, p. 264) that the findings of the industrial accident board have the same weight and effect as the verdict of a jury, and will be so accepted by the reviewing courts. What evidence is necessary to support a finding of the industrial accident board of the State was considered by the Supreme Court of Michigan in *Reck v. Whittlesberger* (p. 236), the court holding that in the absence of direct evidence hearsay evidence based on fresh and available sources of information would suffice.

EMPLOYERS' LIABILITY INSURANCE.

A single case appears under this head, the question involved being the scope of the policy of insurance. This was held in *May Creek Logging Co. v. Pacific Coast Casualty Co.* (p. 291) not to protect the employer in a case in which damages were recovered against it by reason of the malpractice of a company surgeon.

RELIEF ASSOCIATIONS.

The only case to be considered under this head in the present bulletin is that of *Daughtridge v. A. C. L. R. Co.* (p. 334), in which the Supreme Court of North Carolina held that a declaration by an applicant for membership in a railroad relief association that he was in good health in so far as he was aware was not fraudulent, he having been examined and passed by the company's physician, every mark or indication of disease relied upon in the present action being then existent and observable.

LABOR ORGANIZATIONS.

Under this head will be considered not only cases involving organized labor directly, but injunction and contempt proceedings growing out of certain acts connected with labor disputes, and the application

of the antitrust laws, etc., to conditions corresponding in some degree to those that operate in labor organizations. Perhaps the most notable case in this field is that involving the liability of the individual members of the hatters' union for injuries resulting from a boycott conducted by the union through its officers (*Lawlor v. Loewe*, p. 137). The Supreme Court of the United States held in this case that the individual members had notice of the acts done and were liable under the Federal antitrust law for resultant damages, affirming the judgment of the appeals court (same case, p. 140). An injunction was granted under the same statute to forbid a conspiracy in restraint of trade, and the maintenance of blacklists and the establishment of a boycott by retail lumber dealers (*Eastern States Retail Lumber Dealers' Association v. United States*, p. 53).

Two closely related cases involving unlawful combinations in restraint of trade were considered in the United States District Court for the Southern District of New York, based on activities of union carpenters and joiners. In *Irving v. Neal* (p. 162) a petition for an injunction under the Federal antitrust law was denied on the ground that such relief under that act could be had only at the instance of the Government, though unlawful combination under the act was found. It was held, however, that the State statutes had been violated and that civil remedies, including injunctive relief, were available to the complainants. In the other case (*Paine Lumber Co. v. Neal*, p. 164) the complainants were held not to have proved injurious acts in pursuance of an unlawful agreement such as would warrant the issue of an injunction.

The Arkansas antitrust law was held (*State ex rel. Moose v. Frank*, p. 50) not to forbid an agreement between proprietors of laundries to fix prices for their work. The constitutionality of the antitrust law of Missouri was attacked (*International Harvester Co. of America v. State of Missouri*, p. 49) on the ground that the exemption of labor organizations from its prohibitions was a violation of the constitutional provision requiring equal protection of the law, this contention being rejected by the Supreme Court of the United States.

The construction of the Newlands Act, successor to the Erdman Act, providing for the mediation and conciliation of disputes between railroad companies and their employees, was before the court on exceptions to certain definitions and statements used by the arbitrators. The court held (*In re Ga. & Fla. Ry.*, p. 50) that the statute contemplated practically a common-law arbitration, and that so long as the board kept within the agreed terms as to its jurisdiction and purposes the courts should not intervene.

The final proceeding growing out of the Buck Stove & Range case against the American Federation of Labor is the decision by the Supreme Court of the United States (*Gompers v. United States*, p. 133), in which that court held that the penalties for contempt assessed by

the courts for the District of Columbia must be set aside on account of the statute of limitations. The jurisdiction of courts in contempt proceedings was considered in *Ex parte Heffron* (p. 135), the appellate court affirming its right to release on habeas corpus persons imprisoned for contempt for violating an order improperly issued. The injunction issued by the court below was modified as being in part in excess of the powers of a court to issue. A judgment for contempt was affirmed in *Sona v. Aluminum Castings Co.* (p. 305), where it was in evidence that serious assaults had been committed by persons having knowledge of the issue of the injunction.

The power of a court to issue an injunction was considered in *Baltic Mining Co. v. Houghton* Circuit Judge (p. 310). The court below had issued an injunction and then ordered a dissolution on the ground that it had not had the power to take such a step. The supreme court directed the reinstatement of the injunction, showing at some length the grounds for its action.

An injunction was held properly issued in a case (*Burnham v. Dowd*, p. 270) in which a mason's union had procured a boycott against a materialman who had furnished material for use in work on which nonunion masons had been employed, damages being also allowed for unlawful interference with the business of another. Persons inciting others to violence were held to have violated an injunction in *United States v. Colo et al.* (p. 306), and to be guilty of contempt of court, as well as of the actual commission of acts of violence. Incitement to the commission of criminal acts during a strike was held to be proved, and the criminal statutes of New Jersey to have been violated, in *State v. Quinlan* (p. 160). In *People v. Ford* (p. 326) a conviction for manslaughter was sustained in a case in which incitement to violence was proved, one of the defendants being possibly an actual participant in the killing.

Another case involving criminal prosecution was that of *Ryan et al. v. United States* (p. 143), in which the defendants had been convicted of conspiracy to commit crime in the transportation of explosives by interstate trains. The evidence was held sufficient to affirm the judgment in the case of 25 of the defendants, a new trial being granted in the case of 5 others.

The relative status of civil and military authorities was considered in *Ex parte McDonald* (p. 335) in a habeas corpus proceeding in which persons sentenced by a military court during a strike were held to have been improperly sentenced by this body, but not entitled to release, since they might properly be detained for a trial before the civil courts.

The extent to which an injunction may go in restraining the activities of organized labor was given full consideration in *Mitchell v. Hitchman Coal & Coke Co.* (p. 315), the circuit court of appeals reversing a decree of the district court which practically prevented organized

activities. The same court had before it a case (*Bittner v. West Virginia-Pittsburgh Coal Co.*, p. 321) arising out of the same dispute, the evidence in this case, however, showing that violence and intimidation had been resorted to. In this case an injunction forbidding acts of violence and also the use of persuasion and the payment of strike benefits was modified so as to allow the use of peaceful methods, while restraining acts of violence and coercion.

An injunction was allowed by the Supreme Court of Massachusetts, together with damages for loss of employment, in *Fairbanks v. McDonald* (p. 314), in the case of a dispute between labor unions leading to the members of one being discharged by their employers. In *Roddy v. United Mine Workers* (p. 325) no recovery was allowed by the Supreme Court of Oklahoma to a nonunion man who was discharged at the instance of the union, there being no contract for his employment for any definite time. That a labor union might be restrained from establishing a boycott against a workman of the same craft so as to cut him off from employment was held by a Missouri court in *Clarkson v. Laiblan* (p. 313). The Supreme Court of Massachusetts refused to interfere with the carrying out of an agreement between a union and a group of employers which would largely exclude from employment the plaintiffs, who were members of another union (*Hoban v. Dempsey*, p. 303), the court holding that the contract was freely made by the parties to it without a motive to injure the plaintiffs, though it might have the effect of restricting their employment. An injunction was refused a boycotted company in *Gill Engraving Co. v. Doerr* (p. 301), where a union was enforcing its rule not to do any work for customers whose work was not done entirely in union shops. The injury to the plaintiff was not denied, but was held to be only incidental to the main intent, which under controlling decisions was held to be lawful. Interference with business was found to be so direct in *New England Cement Gun Co. v. McGivern* (p. 298) that the Massachusetts Supreme Court held the petitioning company entitled to an injunction against inducing breach of contract and other interference with beneficial business intercourse.

A statute intended to protect members of labor unions in their employment while retaining their membership was held unconstitutional in *Coppage v. Kansas* (p. 147), in which case the Supreme Court of the United States reversed a judgment of the Supreme Court of Kansas. There was an extended dissenting opinion by Justice Day, who pointed out that to hold this act unconstitutional practically decided the invalidity of similar laws in thirteen other States and Porto Rico; while the prevailing opinion stated that, with the single exception of the Supreme Court of Kansas, no court of like rank had ever upheld such a law, an earlier decision of the Supreme Court and six State courts of last resort having held such laws unconstitutional.

The question of picketing was specifically considered by the Supreme Court of Michigan (In re Langell, p. 330) on proceedings to review contempt charges against Langell for the violation of an injunction prohibiting picketing. The power of the court below to issue such an injunction was challenged, but was upheld by the supreme court, as was the conviction for a willful violation of such injunction. While sustaining the legality of peaceful picketing, the Kansas City court of appeals (Berry Foundry Co. v. International Molders' Union, p. 332) held that in the present instance intimidation and coercive means had been used, so that an injunction forbidding the same was held to have been properly issued, and an award of damages for injury to business was affirmed.

Matters of internal organization were considered in *Monroe v. Colored Screwmen's Benevolent Association* (p. 323), in which it was held that the levying of a fine by a union upon certain of its members for violations of rules did not give the aggrieved members access to the courts for redress of their alleged grievances. So in an employers' association, an agreement by its members to pay a stipulated sum as liquidated damages for violation of the rules of the association was held enforceable in *United Hat Manufacturers v. Baird-Unteidt Co.* (p. 278).

The effect on individual contracts of a collective agreement made by a labor union was considered in *Gulla v. Barton* (p. 297), the Supreme Court of New York, appellate division, holding that such collective agreement was of such validity as would support a recovery of the difference between the amount stipulated therein and the employee's wages under a contract made in ignorance thereof.

The liability of a union for libel was affirmed in *United Mine Workers of America v. Cromer* (p. 322), the Court of Appeals of Kentucky affirming an award of damages for the publication in the union paper of the name of the plaintiff in a list of persons designated as "detestable scabs and blacklegs."

The liability of union officials for relief funds collected for the benefit of strikers and their families was affirmed in *Attorney General ex rel. Prendergast et al. v. Bedard et al.* (p. 324).

The statute of Massachusetts which requires employers to insert in advertisements for employees notice of strikes or other disputes, if any exist, was held to be constitutional in *Commonwealth v. Libbey* (p. 184) and a conviction for its violation affirmed.

A case not directly affecting organized labor, but growing out of a labor dispute, was *Lane v. Au Sable Electric Co.* (p. 338), in which no punitive damages were allowed for the ejection of an employee from his dwelling, where he had gone on strike and failed to vacate the house furnished him by the employing company, the court holding that the relation of landlord and tenant had never existed and that the relation of employer and employee had terminated when the workman struck, and he had thereby lost all claim to the occupancy of the dwelling.

DECISIONS OF COURTS AFFECTING LABOR, 1914.

DECISIONS UNDER STATUTE LAW.

ALIEN CONTRACT LABOR—IMPORTATION—CONSTRUCTION OF STATUTE—"OFFER OF EMPLOYMENT"—*United States v. Dwight Manufacturing Co., United States District Court, District of Massachusetts (Nov. 19, 1913), 210 Federal Reporter, page 74.*—The Government brought action to enforce penalties against the company named on 122 counts for the importation of aliens in violation of the immigration act of February 20, 1907, chapter 1134, 34 Stat. 900 (U. S. Comp. Stat. Supp. 1911, p. 503). The company contended that the facts alleged did not present an offense under the act, and the question before the court was as to the sufficiency of the charge. The act defines contract laborers, who are excluded by it, to be persons "who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written, or printed, express or implied, to perform labor in this country, of any kind, skilled or unskilled."

The following extracts from the opinion by Judge Dodge discuss some of the points of law involved:

Each count describes the alleged offer as follows:

"That if said alien would migrate from said * * * to [here naming a place in the United States], said defendant would employ and pay said alien to perform for said defendant at said [place within the United States] certain manual labor, that is to say, to operate and assist in operating divers machines used by the defendant in its mill at said [place within the United States] in the manufacture of cotton fabrics."

Having thus described the alleged offer or promise of employment made to the alien named, each count next alleges that the defendant unlawfully assisted him to migrate by prepaying his passage to a place within the United States; follows this by allegations that, induced by the offer and assisted by the prepayment, he did migrate to the United States; and concludes with allegations that he was not at the time an alien entitled to enter the country, that the defendant well knew the fact to be so, and that it owes the prescribed penalty.

The company objected that the aliens named in the counts were not sufficiently alleged to have been contract laborers within the definition given in the act, maintaining that no offer of employment sufficient to make the alien a "contract laborer," even if he was induced or solicited by it to migrate to this country, had been set forth.

The court rejected this view, saying:

If, as this declaration alleges, the aliens named were in fact induced to migrate by offers no more specific as to terms and conditions

amount to be paid, the character of the labor, or the terms of the payment, than the offers described as above, I do not think the court could properly say that they were not "contract laborers" within the act; nor do I see how the court can properly say that offers made in the terms alleged could not have induced any of them to migrate. This will be a question for the jury, as will also the further question whether or not, if they were so induced, and were therefore "contract laborers," the defendant knowingly assisted their migration as charged after they had thus become "contract laborers." I am unable to hold that the declaration has not sufficiently alleged them to have been contract laborers.

The court further held that where the declaration alleged that the corporation made the offers of employment to the aliens and prepaid their transportation, the fact that it did not specify whether the offers were made by an officer of the corporation or by some other person, and did not allege whether they had authority, whether the offers were oral or in writing, or their terms, did not render it demurrable.

ALIEN CONTRACT LABOR—VIOLATION OF STATUTE—NATURE OF ACTION—PENALTIES—*Grant Bros. Construction Co. v. United States, Supreme Court of the United States (Mar. 16, 1914), 34 Supreme Court Reporter, page 452.*—The company named and certain agents had been found guilty of a violation of the immigration law of February 20, 1907 (34 Stat. 898), the Supreme Court of Arizona having assessed penalties of \$1,000 each in 45 cases. (114 Pac. 955; see Bul. No. 95, p. 289.) A number of the errors alleged to have been committed by the court below related to procedure and need not be noted here. Mr. Justice Van Devanter, who delivered the opinion of the court, summarized the evidence, which was to the effect that the company was engaged in the construction of a railroad in southern Arizona and had employed an agent to secure workmen. This person employed assistants to follow his suggestions and cooperate with him in the work in which he was engaged. The board of inquiry of the immigration office decided that 45 men in a group of workmen crossing the boundary line from Mexico were aliens, and it was found that their immigration was due to representations made by the company's agents.

Among the complaints made against the trial court was one that the case had been treated as a civil suit rather than a criminal procedure, and that the depositions of absent witnesses had been read and the jury instructed to return a verdict for the Government if the evidence reasonably preponderated in its favor. Objections to this procedure were overruled by the Supreme Court, the court holding that the action was civil and attended with the incidents of a civil action.

As to the amount of penalties recoverable Mr. Justice Van Devanter said:

Still another contention is that, as all the men named in the petition were brought into the United States at one time, there was but a single violation of the statute, and only one penalty could be recovered. The statute declares that "separate suits may be brought for each alien thus promised labor or service," and this plainly means that a separate penalty shall be assessed in respect of each alien whose migration or importation is knowingly assisted, encouraged, or solicited in contravention of the statute.

The judgment of the court below was therefore affirmed.

ANTITRUST LAW—MONOPOLIES—RESTRAINT OF TRADE—EXEMPTION OF LABOR ORGANIZATIONS—CONSTITUTIONALITY OF STATUTE—*International Harvester Co. of America v. State of Missouri, United States Supreme Court (June 8, 1914), 34 Supreme Court Reporter, page 859.*—Judgment was secured by the State of Missouri against the company named in the supreme court of that State, excluding it from doing business in the State, and this was affirmed in the United States Supreme Court. The company was charged with violation of the State antitrust law, and based its defense on certain objections to the constitutionality of the statute, one of which was that it denied equal protection of the laws in excluding combinations of wage earners from the prohibitions against combinations to lessen competition and regulate prices. This is the item of interest from a labor point of view. In dealing with it Mr. Justice McKenna, who delivered the opinion of the court, spoke in part as follows:

Plaintiff in error makes three contentions: (1) The statutes * * * (2) discriminate between the vendors of commodities and the vendors of labor and services; and (3) between vendors and purchasers of commodities.

These contentions may be considered together, both involving a charge of discrimination,—the one because the law does not embrace vendors of labor; the other because it does not cover purchasers of commodities as well as vendors of them. Both, therefore, invoke a consideration of the power of classification which may be exerted in the legislation of the State. And we shall presently see that power has very broad range. A classification is not invalid because of simple inequality. We said in *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U. S. 96, 106, 19 Sup. Ct. 609, by Mr. Justice Brewer: "The very idea of classification is that of inequality, so that it goes without saying that the fact of inequality in no manner determines the matter of constitutionality."

We have said that it must be palpably arbitrary to authorize a judicial review of it, and that it can not be disturbed by the courts

"unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched." [Cases cited.]

Whether the Missouri statute should have set its condemnation on restraints generally, prohibiting combined action for any purpose and to everybody, or confined it as the statute does to manufacturers and vendors of articles, and permitting it to purchasers of such articles; prohibiting it to sellers of commodities and permitting it to sellers of services, was a matter of legislative judgment; and we can not say that the distinctions made are palpably arbitrary, which we have seen is the condition of judicial review. It is to be remembered that the question presented is of the power of the legislature, not the policy of the exercise of the power. To be able to find fault, therefore, with such policy, is not to establish the invalidity of the law based upon it.

ANTITRUST LAW — UNLAWFUL COMBINATIONS — MONOPOLIES — LAUNDRIES—CONSTRUCTION OF STATUTE—*State ex rel. Moose, Atty. Gen. v. Frank et al., Supreme Court of Arkansas (July 13, 1914), 169 Southwestern Reporter, page 333.*—A complaint was brought by the State against Aaron Frank and others to recover a penalty for an unlawful combination in violation of the antitrust law of the State of Arkansas. Judgment was in favor of the defendants in the circuit court of Pulaski County on a demurrer to the complaint, which judgment was on appeal affirmed. The decision turned on the construction of the statute, the State conceding that an agreement to fix the price of laundering, as had been undertaken by the proprietors of the defendant laundries doing business in the city of Little Rock, was not an agreement to fix the price of any article of manufacture, mechanism, or merchandise, forbidden by the statute, but holding that such agreement was an undertaking to fix the price of a commodity, convenience, or repair, within its prohibitions. This contention the court rejected, discussing the terms used at some length, and citing cases sustaining its views as to the nonapplicability of the statute, the opinion of Judge Smith, who spoke for the court, concluding as follows:

If the business of laundering is not a commodity, then an agreement fixing prices for the performance of that service is not within the inhibition of the antitrust act. The business of laundering is a mere service done, whether performed by hand or by machinery, and an agreement to regulate the price to be charged therefor is in its last analysis merely an agreement to fix the price of labor, or services, and the legislature of this State has not made such an agreement unlawful.

ARBITRATION OF LABOR DISPUTES—AWARD—EXCEPTIONS—PROCEDURE—*In re Georgia & Florida Railway, United States District Court, Southern District of Georgia (July 30, 1914), 215 Federal Re-*

porter, page 195.—A board of arbitrators had been appointed under the provisions of the Newlands Act providing for the mediation and conciliation of disputes between railroad companies and their employees (38 Stat. 103, ch. 6, Acts of 1913), and exceptions were filed to its award. The statute provides for a permanent board of mediation and conciliation, and for the appointment of arbitrators in cases in which this board does not secure the adjustment of the questions involved. Before the appointment of the arbitrators, an agreement in writing must be made by the parties, stipulating that the arbitration is to be made under the provisions of the act, stating specifically the questions to be submitted to the arbitrators for decision, and stipulating that a majority of the board of arbitrators shall be competent to make a valid and binding award. Awards, papers, proceedings, and testimony, certified under the hands of the arbitrators, are to be filed with the clerk of the court of the district wherein the dispute arose, and unless exception is taken thereto within a fixed period, for error of law apparent on the record, such awards are to be binding upon the parties for the term agreed upon.

In the case in hand four exceptions were offered to the award of the arbitrators, one as to the interpretation of the word "arbitration" made by the chairman of the board to the effect that "all matters of arbitration are matters of compromise," the contention being that if this view influenced the award it was error. As to this the court said that there was nothing on the record to show how this remark of one member of the board affected the award. Another exception was as to the correctness of the issue before the board as indicated by a statement by the arbitrator representing the employees. The other exceptions relate to the principles used in arriving at the conclusions reached by the board.

Judge Sheppard, who delivered the opinion of the court dismissing all the exceptions, recited the foregoing facts and quoted portions of the statute under which the arbitration was had, and said:

It is observed by the express terms of the statute that the award shall be final and conclusive upon the parties unless set aside for error apparent upon the record. Thus, we are met at the threshold of the inquiry with the query: Do the exceptions stated above present within the purview of the statute such errors of law as can be reviewed by the court? The only precedent that has rewarded the industry of the court for construction of the act in question is the case which construed the Erdman Act, *In re Southern Pacific* (C. C.) 155 Fed. 1001, [Bul. No. 74, p. 206], where the provisions of the statute for review by the court for errors apparent on the record were presented. There it was held that an arbitration under the former (Erdman) act, containing essentially the same provisions as section 4 of the present act, was substantially a common-law arbitration, and the power and authority of the board rest solely upon the written submission entered into by the parties, which limits and determines not

only the rights of the parties, but also the extent of the powers of the arbitrators, and that the submission is to be construed according to the rules governing contracts and not those governing pleadings. By reference to paragraph 5 of section 4, it is required that the agreement shall state specifically the matters to be submitted to the board for its decision. Obviously, it was the right of either party under the statute to have prescribed the scope of the inquiry, and to have defined the principles of law or conditions of fact upon which the inquisition was to proceed and the award to be established. Doubtless any departure from accepted rules, or failure on the part of the board to follow the adopted criteria, or the nonobservance of the restrictions imposed by agreement upon the latitude of the board's investigation, would have been cause for error apparent upon the record to which exception would lie as provided in the statute.

There were, however, no limitations by the agreement to arbitrate put upon the scope of the inquiry, or any method prescribed as to how the board was to ascertain a reasonable wage to be paid the employees. It appears that the alleged errors presented by the exceptions raise questions of mixed law and fact put in issue by the submission without limitation, and having been heard and determined by the court constituted by consent of the parties called to arbitrate, that is to say, to hear, compare, adjust, and adjudicate the controversies, is as conclusive of the matters submitted, as well as the process by which they were reached, as the verdict of a jury. It would seem on the facts that their judgments are reviewable for only such errors as would warrant setting aside a common-law arbitration—such error as goes to jurisdiction, right or authority of the court to determine. The award has not been assailed, it will be observed, on any ground that would avoid it for lack of jurisdiction; or any ground that would be cause for setting aside the award of a common-law arbitration; it is not pretended that it was not a legally constituted board, or that the statute under which it was organized was invalid, or that the board traveled beyond the scope of the matters properly submitted by agreement of the parties. By the agreement, the parties accepted the *modus operandi* of the statute for a speedy and expeditious adjustment of their differences, and thereby voluntarily waived any rights to have the questions involved determined by the strict and cumbersome rules of the courts of law. Arbitration, it is agreed, generally is a substitution by consent of the parties of a simple expeditious tribunal in lieu of courts whose procedure is circumscribed by definite rules of law.

It is plain from the text of the act that Congress, appreciating the necessity of a forum for the arbitration of distracting controversies which often arise between employees and employers, established a tribunal to which the parties at their option might resort for a speedy determination of such controversies on their merits, without the delays incident to trials in courts of law. If the awards of such courts are to be set aside on technical grounds, or because their proceedings were not according to the rules of law, it would tend to set at naught the good offices of Congress as expressed by the act and leave to the courts at last, in spite of legislation to the contrary, the settlement of such controversies. It was undoubtedly the intent of the legislature that such awards should be final except for such error that would avoid the proceedings *ab initio*.

The exceptions should be dismissed, and the award affirmed, and it will be so ordered.

On appeal to the circuit court of appeals (217 Fed. 755, decided Oct. 30, 1914), that court affirmed the judgment of the district court, holding that an award is subject to exception only on some ground which affects the jurisdiction, right, or authority of the arbitrators to make the same, and that such review can extend only to questions affecting the legality of the proceedings or the conclusiveness of the award, and views expressed by the arbitrators or reasons given for their decision are immaterial.

BOYCOTT—BLACKLISTING—CONSPIRACY—COMBINATION IN RESTRAINT OF TRADE—ANTITRUST LAW—*Eastern States Retail Lumber Dealers' Association v. United States*, *United States Supreme Court* (June 22, 1915), *34 Supreme Court Reporter*, page 951.—The association named brought its appeal to the Supreme Court to review a decree of the District Court of the United States for the Southern District of New York enjoining it as an unlawful combination under the Sherman Antitrust Act. The appeal resulted in the decree of the court below being affirmed. The association was made up of retail lumber dealers in a number of States, including New York and Massachusetts on the north and Maryland on the south, and among its activities was the distribution of a document known as the "official report," in which, on account of "an interest in common with your fellow members in the information contained in this statement," certain information was communicated "in strictest confidence, and with the understanding that you are to receive it and treat it in the same way." Following these statements was a list of wholesale dealers who had been reported as having solicited or quoted or sold directly to consumers. Members were also encouraged to report in detail any instance of such action on the part of wholesalers, the names being obtained and placed on the list as the result of complaints made by individual retailers. Counsel for the association stated that complaints of this nature were investigated and if serious and well founded were acted upon by the board which, if satisfied that the wholesaler made a practice of selling to consumers and customers of the retail trade, directed the name of such wholesaler to be reported for the official list. The name could be removed on satisfactory assurance that the wholesaler was no longer selling in competition with retailers. Having stated these facts Mr. Justice Day, who delivered the opinion, said in part:

The reading of the official report shows that it is intended to give confidential information to the members of the associations of the names of wholesalers reported as soliciting or selling directly to con-

sumers, members upon learning of any such instances being called upon to promptly report the same, supplying detailed information as to the particulars of the transaction. These lists were quite commonly spoken of as blacklists, and when the attention of a retailer was brought to the name of a wholesaler who had acted in this wise it was with the evident purpose that he should know of such conduct and act accordingly. True it is that there is no agreement among the retailers to refrain from dealing with listed wholesalers, nor is there any penalty annexed for the failure so to do; but he is blind indeed who does not see the purpose in the predetermined and periodical circulation of this report to put the ban upon wholesale dealers whose names appear in the list of unfair dealers trying by methods obnoxious to the retail dealers to supply the trade which they regard as their own.

In other words, the circulation of such information among the hundreds of retailers as to the alleged delinquency of a wholesaler with one of their number had and was intended to have the natural effect of causing such retailers to withhold their patronage from the concern listed.

The Sherman Act has been so frequently and recently before this court as to require no extended discussion now. [Cases cited.] It broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce.

In *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 31 Sup. Ct. Rep. 492 [Bul. No. 95, p. 323], after citing *Loewe v. Lawlor* [208 U. S. 274, 28 Sup. Ct. 301, Bul. No. 75, p. 622], this court said (p. 438):

"But the principle announced by the court was general. It [the Sherman Act] covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words, or printed matter."

These principles are applicable to this situation. Here are wholesale dealers in large number engaged in interstate trade upon whom it is proposed to impose as a condition of carrying on that trade that they shall not sell in such manner that a local retail dealer may regard such sale as an infringement of his exclusive right to trade, upon pain of being reported as an unfair dealer to a large number of other retail dealers associated with the offended dealer, the purpose being to keep the wholesaler from dealing not only with the particular dealer who reports him, but with all others of the class who may be informed of his delinquency. "Section 1 of the act * * * is not confined to voluntary restraints, as where persons engaged in interstate trade or commerce agree to suppress competition among themselves, but includes as well involuntary restraints, as where persons not so engaged conspire to compel action by others, or to create artificial conditions, which necessarily impede or burden the due course of such trade or commerce, or restrict the common liberty to engage therein." *United States v. Patten*, 226 U. S. 541, 33 Sup. Ct. Rep. 141. This record abounds in instances where the offending dealer was thus

reported, the hoped-for effect, unless he discontinued the offending practice, realized, and his trade directly and appreciably impaired.

But it is said that in order to show a combination or conspiracy within the Sherman Act some agreement must be shown under which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony, and may be inferred from the things actually done; and when, in this case, by concerted action the names of wholesalers who were reported as having made sales to consumers were periodically reported to the other members of the associations, the conspiracy to accomplish that which was the natural consequence of such action may be readily inferred.

The circulation of these reports not only tends to directly restrain the freedom of commerce by preventing the listed dealers from entering into competition with retailers, as was held by the district court, but it directly tends to prevent other retailers who have no personal grievance against him, and with whom he might trade, from so doing, they being deterred solely because of the influence of the report circulated among the members of the associations. In other words the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance, when brought to the attention of others, it was hoped would deter them from dealing with the offending party. This practice takes the case out of those normal and usual agreements in aid of trade and commerce which may be found not to be within the act, and puts it within the prohibited class of undue and unreasonable restraints, such as was the particular subject of condemnation in *Loewe v. Lawlor* [supra].

The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.

A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. "But," as was said by Mr. Justice Lurton, speaking for the court in *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433, 30 Sup. Ct. Rep. 535 [Bul. No. 89, p. 414], "when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed."

CIVIL-SERVICE EMPLOYEES—PENSION FUNDS—DEDUCTION FROM SALARIES—CONSTITUTIONALITY OF STATUTE—*Hughes v. Traeger et al.*, Supreme Court of Illinois (Oct. 16, 1914), 106 *Northeastern Reporter*, page 431.—This was a suit by Edward J. Hughes against John E. Traeger and others on a bill in chancery to prevent the retention of any portion of the complainant's salary under the provisions of the civil-service pension law of the State (Laws of 1911, p. 158). This act provides for the establishment of such a fund, chiefly by the retention from salaries and wages by the comptroller of the municipalities to which the act applies of the sum of \$2 per month for each employee within its scope. The complaint charged that the statute in question was unconstitutional, so that from a decree for the defendant officials the case was taken on a writ of error from the circuit court of Cook County to the supreme court, this court holding that the statute was constitutional.

The status of the complainant and the operation of the law are discussed in the following quotation from the opinion of the court, which was delivered by Judge Dunn:

By section 1 of the pension fund act its provisions do not apply to temporary or probationary employees or to laborers, except, in case of the latter, upon their request. It applies, therefore, only to those holding permanent positions, and those positions, whether called offices or places of employment, have substantially the same characteristics, without regard to the character of the services rendered.

The bill states that the complainant was employed in the civil service of the city, but necessarily, under the provisions of section 10 of the civil-service act, he was appointed by some appointing officer acting under some authority derived from the city council. By virtue of that appointment, and without regard to any agreement or contract, the complainant was entitled to hold his position and receive its emoluments until discharged for cause in the manner prescribed by the civil-service act; but he was not bound to perform the duties of his position for any length of time. He would violate no obligation by leaving the service of the city at any time. There were no terms of service agreed upon. The respective rights and obligations of the city and the complainant were not fixed by contract, but by law and the action of the council authorizing his appointment. He did not hold his position or perform its duties by virtue of any contract. He had no property right in his position or the salary attached thereto, and no right to compensation growing out of any contractual relation. His position was subject to the same legislative control as may be exercised over any public office. Offices created by statute are wholly within the control of the legislature, which may at pleasure create or abolish them, modify their duties, shorten or lengthen their terms, increase or diminish the salary, or change the mode of compensation; and the power of municipal corporations, within the limits prescribed by the constitution or by statute, is of the same absolute character.

The effect of the law was to reduce the salary which the complainant would receive, \$2 a month, but he was not thereby deprived of his property, for he had no property in his unearned salary. It is true that the complainant acquires no vested interest in the fund created by the statute, for there is no contract by the State or the city that the disposition of the fund may not be changed in the future, and in such event the complainant's expectancy might be destroyed. The \$2 a month deducted from the pay of each employee does not become the property of such employee and can not be controlled or disposed of by him. The fund created by these deductions remains subject to the disposition of the legislature, and the employees can not prevent its appropriation in another way than that designated by the statute. It is not their property, and the statute does not amount to a contract by the State to use it in the manner provided by the statute. A change in the disposition of the fund would not, however, violate any right of the complainant, for until the happening of the event designated by the statute for its distribution he has no vested right in the fund, but only an expectancy created by the law, which the law may revoke or destroy. *Pennie v. Reis*, 132 U. S. 464, 10 Sup. Ct. 149; *State v. Trustees*, 121 Wis. 44, 98 N. W. 954.

It is argued that, if the money retained be regarded as public money, the act is void as an appropriation of public money for private use and allowing extra money to public officers for services already performed. In *Firemen's Benevolent Ass'n v. Lounsbury*, 21 Ill. 511, 74 Am. Dec. 115, it was held that the raising of funds for the relief of the distressed, sick, injured, or disabled members of the Firemen's Benevolent Association of Chicago and their immediate families was a public charity, for which the legislature could make provision. Judge Dillon, writing of pensions for municipal services, in his work on *Municipal Corporations*, vol. 1, sec. 430 (5th ed.), says that these annuities—"are, in effect, pay withheld to induce long-continued and faithful service, and the public benefit accrues in two ways: First, by encouraging competent and faithful employees to remain in the service and refrain from embarking in other vocations; and, second, by retiring from the public service those who, by devoting their best energies for a long period of years to the performance of duties in a public office or employment, have by reason thereof or of advanced age become incapacitated from performing the duties as well as they might be performed by others more youthful or in greater physical or mental vigor."

In *Commonwealth v. Walton*, 182 Pa. 373, 38 Atl. 790, legislation like that in question was sustained against a similar objection. The purpose of the legislation is within the constitutional power of the general assembly.

CONTRACT OF EMPLOYMENT — BREACH — SUITS — LIMITATIONS—
Pennsylvania Co. v. Good. *Appellate Court of Indiana* (Dec. 19, 1913), 103 *Northeastern Reporter*, page 672.—This was an action by John S. Good against the railroad company named for damages for alleged breach of contract of employment. Judgment was in his favor in the circuit court of Marion County, and the company appealed. The employee set forth that, in 1882, following the receipt of an

injury, his claim for damages was released in consideration of an agreement by the company to employ him as watchman, during his life, at certain wages. He was employed in this capacity for some time and discharged May 22, 1902, on account of which this action was brought.

The company in its appeal argued that Good's right of action expired by the statute of limitations in May, 1908. He had brought suit in 1904, but his counsel had voluntarily dismissed it after a partial trial because of rulings by the court which he believed were erroneous. As to the remedies which Good originally had and his election between them, the court, speaking by Judge Lairy, said:

Upon such a breach, appellee had a right to pursue either of two remedies. He might treat the contract as still subsisting, hold himself in readiness to perform and sue on the contract for the wages due him thereunder, or he could treat the contract as terminated by the breach, and sue at once for the entire damages resulting to him from such breach. [Cases cited.]

The cause of action for a breach of a contract accrues at the time the breach occurs, and the statute of limitation begins to run from that date.

If appellant had elected to treat the contract as still subsisting, and to sue under it for his wages, his cause of action as to each installment of such wages would have accrued at the time when such installment was due and payable by the terms of the contract, and the statute of limitations as to each installment would run from the time it became due. In this case appellee elected to treat the contract of employment as terminated by his discharge, and to sue for the entire damage resulting to him. This right of action accrued on the date of his discharge, and the statute of limitations expired on the 22d day of May, 1908.

CONVICT LABOR—STATE EMPLOYMENT—CONSTITUTIONALITY OF STATUTE—*Shenandoah Lime Co. et al. v. Mann et al.*, *Supreme Court of Appeals of Virginia* (Jan. 15, 1913), *80 Southeastern Reporter*, page 753.—An act of the General Assembly of Virginia, known as the "Convict lime grinding act," which was approved March 14, 1912 (ch. 295, Acts of 1912, p. 586), provides for the employment of convicts at grinding oyster shells and limestone rock, provides for procuring the material upon which they are to work and the instrumentalities with which they are to do the work, and provides for the sale of the product of their labor and for their support from the proceeds. An appropriation of \$30,000 is made by the act to carry its provision into effect.

The Shenandoah Lime Co. brought suit against William Mann, governor of the State, and other State officials, in the circuit court of the city of Richmond, for an injunction to prevent the enforcement of the act, on the ground that the law was unconstitutional as it

violates section 185 of the Virginia constitution, which forbids the State from becoming a party to or interested in any work of internal improvement, except public roads, or engaged in carrying on such work. It was also contended that the act is obnoxious to section 188 of the constitution because it appropriates public funds for a private purpose or business, and because it amounts to the taking of the property of the lime company without due process of law, contrary to the fourteenth amendment of the Federal Constitution.

The court held that the law was constitutional and dismissed the bill of the company, whereupon an appeal was taken to the Supreme Court of Appeals of Virginia, where the decision of the lower court was affirmed. Judge Harrison, after reviewing the facts in the case, spoke in part as follows:

It is apparent from the title, preamble, and the body of this act that its dominant purpose is to provide suitable employment for certain long-term or dangerous convicts confined in the penitentiary, and that the other provisions of the act are merely tributary to that end.

We are of opinion that the machinery for grinding oyster shells and limestone rock, and the temporary structures for housing the convicts pending the work contemplated by the act in question do not come within the meaning of the term "internal improvements," as that term is used in section 185 of the constitution. Whatever interpretation that term may have elsewhere, it has no such meaning in Virginia, where for nearly, if not quite, 100 years it has acquired a definite and well-recognized meaning. Its meaning as thus defined and understood throughout the legislation of the State, and the decisions of her courts has included and had reference to the channels of trade and commerce, such as turnpikes, canals, railroads, telegraph lines, including in more recent years telephone lines, and other works of a like quasi public character.

The manifestly dominant purpose of the act being, as already seen, to provide employment for convicts who could not be used in the usual employments under existing statutes, there can be no question that the State is acting within its police power in providing the present means for employing such convicts.

We are warranted, upon abundant authority, in holding that the exercise by the State of its police power, in enacting the "Convict lime grinding act" under consideration, can not be defeated because of any conflict with section 185 of the constitution.

We are further of opinion that the act does not violate section 188 of the Virginia constitution. It does not, as contended, appropriate public funds for a private purpose; nor does it amount to the taking of the property of complainants without due process of law, contrary to the fourteenth amendment of the Federal Constitution. It being the purpose of the act to furnish employment to convicts, as appears from the act itself, and that purpose being, as already seen, a valid exercise by the State of its police power, the appropriation which the act carries is clearly for a public purpose and not for a private purpose.

CONVICT LABOR—WORKING OUT COSTS—ACTION FOR EXCESS WORK—*Tennessee Coal, Iron & Railroad Co. v. Butler, Supreme Court of Alabama (June 4, 1914), 65 Southern Reporter, page 804.*—Alex Butler brought action against the company named in the city court of Birmingham, where his suit prevailed. Butler had been convicted of petty larceny. He was hired from Jefferson County to the defendant company to work during the term of his sentence. After serving his sentence of 110 days at hard labor he proceeded to work out his costs, which amounted to \$29.35, at the rate of 40 cents a day as provided in the sentence. Under the law he was entitled to work out the costs at the rate of 75 cents a day. He claimed as damages the value of the labor which he had performed in excess of the legal amount, and the court held that his further imprisonment after the valid part of the contract was illegal, and affirmed the judgment in his favor.

EMPLOYERS' LIABILITY—ABROGATION OF DEFENSES—CLASSIFICATION OF EMPLOYMENTS—CONSTITUTIONALITY OF STATUTE—*Vandalia Railroad Co. v. Stilwell, Supreme Court of Indiana (Mar. 10, 1914), 104 Northeastern Reporter, page 289.*—Charles Stilwell was a freight brakeman in the employ of the company named, and sued the company for damages for personal injury. The first paragraph of the complaint charges negligence of the engineer in backing an engine and cars against a car on which appellee was riding in the course of his duty, whereby he was thrown from the car and injured, and no question is raised as to its sufficiency. The second paragraph alleges the railroad's liability under the employers' liability act of March 2, 1911 (Acts of 1911, p. 145). The railroad company demurred to this paragraph, and assigned the overruling of the demurrer as error in appealing from the judgment of the circuit court of Morgan County in favor of the employee. Judge Myers delivered the opinion of the court, affirming the judgment of the court below. As to the grounds of defense he said:

The specific grounds of challenge of the constitutionality of this act is [are] that it makes an employer liable for an injury to an employee arising out of dangers and hazards inherent in the nature of the employment, without fault of the employer, and thereby deprives appellant of its liberty and property without due process of law, in violation of article 14, in amendment of the Federal Constitution, and of section 12, art. 1, of the State constitution, and that it makes employers of five or more persons liable, and leaves employers of less than five persons free from the obligations, and liabilities imposed by the act, and thereby denies appellant the equal protection of the laws in violation of the fourteenth amendment to the Federal Constitution, and section 23, art. 1, of the State constitution.

Analyzing the effect of the law, the court concluded that the statute does not change the law as it formerly existed as to when an

employee assumes the risk, or is negligent, or as to the burden of proof as to negligence, but does destroy the fellow-servant rule and changes the rule as to burden of proof as to knowledge or constructive knowledge of the defect in the place, tool, or appliance; that the statute creates no liability on the part of the employers where there is no negligence, and hence does not deprive employers of liberty or property without due process of law.

Judge Myers discussed at length the question of the classification making the act applicable only to employers of five or more workmen, and concluded that it must be considered a reasonable classification on the ground that unless courts are satisfied that there can be no reasonable basis for such a classification, they will not overthrow the statute. The following brief quotations are taken from the discussion on this point:

The question resolves into the proposition under the broadest views of the case, whether the classification made by the statute here involved rests upon some material or substantial basis, and operates upon all alike within the class.

This statute * * * operates upon conditions which by reason of numbers are not and can not be the same, though the relation should be close, but which will be the same in case the number is reached, in analogy to classification by population, in addition to the fact that there is a natural relation of increase of danger from mere numbers, even though there should seem to be some inequality between so small a difference as between four and five, but that is an inseparable incident of the power of classification.

As to the application of the act to railroads, Judge Myers said:

It is next urged that the act does not apply to railroads for the reason that they are not engaged in "business, trade or commerce," in the language of the act. "Business" is defined as that which occupies the time, attention, or labor, of men for the purpose of profit or improvement, as their principal concern. [Cases cited.]

"Commerce" is defined as traffic and something more; it is intercourse, transportation; and the latter is commerce itself. It includes not merely traffic, but the means and vehicles by which it is accomplished. As used in the Federal Constitution, it, of course, applies to relations between citizens of different States, foreign nations, and the Indian tribes, and is broad enough to embrace intrastate traffic, and transportation, as well. We have no difficulty in determining that the statute embraces railroads.

EMPLOYERS' LIABILITY—ABROGATION OF DEFENSES—CONSTITUTIONALITY OF WORKMEN'S COMPENSATION ACT—*Crooks v. Tazewell Coal Co.*, Supreme Court of Illinois (Apr. 23, 1914), 105 *Northeastern Reporter*, page 132.—Louis Crooks brought action against the company named for damages for personal injury, alleged to have been caused by its negligence in failing to construct an entry in its mine

of sufficient height and width to permit him safely to drive coal cars through it, and in allowing coal and refuse to accumulate on the tracks. The company had elected not to come under the workmen's compensation act of the State (Acts of 1911, p. 314), and consequently, in accordance with its provisions, was deprived of the defenses of assumed risk, negligence of fellow servants, and contributory negligence. It questioned the constitutionality of the act, but contended that, since the employee had elected to come within the provisions of the act, he was limited in the amount of his recovery by the act, and must bring his proceeding under it. The court affirmed a judgment of the circuit court of Tazewell County for the plaintiff, and followed the decision in *Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N. E. 211 (see p. 216), in holding that the act is constitutional, and also that where either party elects not to be bound by the act, and so notifies the proper authorities, there is no contract under the act, and the employee is not limited in his recovery by its terms.

EMPLOYERS' LIABILITY—ABROGATION OF FELLOW-SERVANT DOCTRINE—CONSTITUTIONALITY OF STATUTE—*Easterling Lumber Co. v. Pierce, Supreme Court of Mississippi (Mar. 2, 1914), 64 Southern Reporter, page 461.*—S. W. Pierce, the plaintiff, recovered in the circuit court of Covington County, the sum of \$17,500 as damages for personal injuries resulting in the loss of a leg, suffered while an engineer in the employ of the company named. The engine which he was driving on a logging road, hauling a train carrying employees to the company's camp, met in head-on collision another engine pulling cars from the camp. The constitutionality of the statute (ch. 194, Acts of 1908) abolishing the fellow-servant rule among certain employees was brought in question, the company advancing two reasons: (1) It violates section 193 of the Mississippi constitution, which largely took away the defense of fellow service in personal-injury suits against common-carrier railroads; (2) it violates the equality clause of the fourteenth amendment to the Constitution of the United States.

Judge Reed, in delivering the opinion of the court, spoke in part as follows:

We quote the first section of the chapter:

"Every employee of a railroad corporation, and all other corporations and individuals, using engines, locomotives or cars of any kind or description whatsoever, propelled by the dangerous agencies of steam, electricity, gas, gasoline or lever power, and running on tracks, shall have the same rights and remedies for an injury suffered by him from the act or omission of such railroad corporation or others, or their employees, as are allowed by law to other persons not employed. * * *"

It has been held that section 193 applies only to railroad corporations engaged in the business of common carrier, or those denominated "commercial railroad companies," and that it does not apply to railroads owned and operated as an adjunct to the main business of their owners, such as construction company roads, roads used in connection with mines and lumber corporations and logging roads. *Construction Co. v. Heflin*, 88 Miss. 314, 42 So. 174, [Bul. No. 69, p. 446]. The railroad in the case at bar is a logging road.

It will be noticed that the final sentence of section 193 provides for the extension of the remedies therein in the following language: "The legislature may extend the remedies herein provided for to any other class of employees." It is not argued by counsel for appellant that the legislature could not extend the remedies to employees of logging roads. It is conceded that this may be done. It is claimed that the words were at once a grant and a limitation; that by necessary inference the limitation amounted to a denial to the legislature of a power to grant any remedies curtailing the fellow-servant rule other than those provided in the section. It is true that by the statute (ch. 194, Acts 1908) there is a broader and fuller statement of the abrogation of the fellow-servant rule than that contained in the section of the constitution. The makers of the constitution, by section 193, provided for the abrogation of the fellow-servant doctrine to a certain extent.

It was said by Mr. Chief Justice Whitfield in the case of *Ballard v. Oil Co.*, 81 Miss. 507, 34 So. 533 [Bul. No. 49, p. 1363], that it was the purpose of the framers of the constitution to authorize legislation to abolish the fellow-servant rule in the case of railroad corporations whose business was known to be inherently dangerous in so far as such litigation [legislation] would be in accord with the principles announced by the decisions of the United States Supreme Court. He further stated in his opinion in that case that "the purpose of the last clause of section 193 was to extend the remedies therein provided for to any other class of employees of corporations or persons whose business was, like that of railroads, inherently dangerous, or whose business was so different from the business of other corporations or persons as to furnish the basis for a classification of the business of such corporations, or persons, under which their employees might be permitted to sue without reference to the fellow-servant rule, while the employees of corporations, or persons not having that sort of business, could not so sue; in other words, to permit a classification based on 'some difference bearing a reasonable and just relation to the act in respect to which the classification is proposed.' * * * It is not therefore to be supposed that the last clause of the section meant any more than that there might be other classifications of the employees of corporations or individual persons based also on some distinguishing difference in the nature of the businesses."

We can not believe from an entire consideration of the section, and in view of its evident purpose, that the final sentence was intended as a restriction. In truth, we do not see that it is necessary to regard it as a grant in order that the legislature should be able to enact a statute to abolish the fellow-servant rule in proper classes of employees. The legislature is intrusted with the general authority to make laws at discretion, unless there is a clear constitutional prohibition.

Now as to the contention that chapter 194 violates the equality clause of the fourteenth amendment of the Constitution of the United States: Counsel for appellant contend that this violation is accomplished by the inclusion of the words "and running on tracks." We can not agree with counsel that this is so. It has been held that section 193 of the constitution excludes all railroads except commercial railroads, or those engaged in the business of common carrier. We see in the act of the legislature the purpose to extend the remedy provided by the abrogation of the fellow-servant doctrine to all employees of all railroad corporations, including the commercial railroads, and including also all other railroads, such as logging railroads and those connected with lumber and other enterprises using such engines, locomotives, and cars "running on tracks." We understand the words "running on tracks" to define such engines, locomotives and cars propelled by the several dangerous agencies named as are used in all of the different kinds of railways. The statute was meant in its broad expression to exclude no kind of railways in Mississippi. The statute provides that the remedies extend to all employees using engines, locomotives, or cars owned and operated by railroad corporations and all other corporations and individuals.

In short, the class made by the statute is all employees using such engines, locomotives, and cars of all kinds and descriptions propelled by the dangerous agencies specified and running on tracks, that is, on a defined way such as used by railroads. We deem this a reasonable classification which applies equally to all in the same situation.

An attempt was made to carry this case to the Supreme Court of the United States on a writ of error, which that court dismissed for want of jurisdiction (35 Sup. Ct. 133). One ground was that the classification in the statute which has been mentioned was so unequal as to cause the statute to be in conflict with the fourteenth amendment; and the other that chapter 215 of the Mississippi Laws of 1912, enacted after the happening of the accident, but before the trial, providing that from the proof of the happening of an accident there should arise a prima facie presumption of negligence, was wanting in due process because retroactively applied to the case.

Mr. Chief Justice White, who delivered the opinion, said in conclusion:

As it results that at the time the writ of error was sued out it had been conclusively settled by the decisions of this court that both grounds relied on were devoid of merit, we think the alleged constitutional questions were too frivolous to sustain jurisdiction, and we therefore maintain the motion which has been made to dismiss, and our judgment will be, dismissed for want of jurisdiction.

EMPLOYERS' LIABILITY — EMPLOYMENT OF CHILDREN — AGE LIMIT—CONSTITUTIONALITY OF STATUTE—MISREPRESENTATION OF AGE—*Sturges & Burn Manufacturing Co. v. Beauchamp, United States Supreme Court (Dec. 1, 1913), 34 Supreme Court Reporter, page 60.*—Arthur Beauchamp, the defendant in error, was injured

while employed by the company named as a press hand to operate a punch press used in stamping sheet metal, being at the time under 16 years of age. He brought an action through his next friend in the superior court of Cook County, Ill., to recover damages for the injury sustained, relying on a statute of Illinois (Laws of 1903, p. 187, Hurd's Stat. 1909, p. 1082), which, by section 11, prohibited the employment of children under 16 years of age in various hazardous occupations, including that in which the injury occurred. A verdict was rendered for Beauchamp in the trial court, which judgment was affirmed by the supreme court of the State. (250 Ill. 303, 95 N. E. 204.) The case was then taken to the Supreme Court of the United States on error, where the judgment of the State court was affirmed. Mr. Justice Hughes, who delivered the opinion of the court, after stating the facts, said:

The Federal question presented is whether the statute, as construed by the State court, contravenes the fourteenth amendment. It can not be doubted that the State was entitled to prohibit the employment of persons of tender years in dangerous occupations. [Cases cited.] It is urged that the plaintiff in error was not permitted to defend upon the ground that it acted in good faith relying upon the representation made by Beauchamp that he was over sixteen. It is said that, being over fourteen, he at least had attained the age at which he should have been treated as responsible for his statements. But, as it was competent for the State, in securing the safety of the young, to prohibit such employment altogether, it could select means appropriate to make its prohibition effective, and could compel employers, at their peril, to ascertain whether those they employed were in fact under the age specified. The imposition of absolute requirements of this sort is a familiar exercise of the protective power of government. [Cases cited.] And where, as here, such legislation has reasonable relation to a purpose which the State was entitled to effect, it is not open to constitutional objection as a deprivation of liberty or property without due process of law. [Cases cited.]

It is also contended that the statute denied to the plaintiff in error the equal protection of the laws; but the classification it established was clearly within the legislative power.

EMPLOYERS' LIABILITY—GUARDS FOR DANGEROUS MACHINERY—LAUNDRIES—APPLICATION OF LAW—ASSUMPTION OF RISKS—*McClary v. Knight, Supreme Court of Appeals of West Virginia (Dec. 9, 1913), 80 Southeastern Reporter, page 866.*—T. A. McClary was employed in Knight's laundry to run the engine and washers. He was directed to oil one of the washers, and after having done so, was endeavoring to replace the belts on the pulleys of the line shaft overhead. He was standing on top of the washing machine, when his sleeve was

caught in a belt, throwing him into a running wringer or extractor near by, which had no covering over it, and injuring him to such an extent that amputation of his leg was necessary. He sued Knight and obtained a judgment in the circuit court of Cabell County, W. Va., which judgment was affirmed by the State supreme court of appeals.

In considering whether a laundry was an establishment within the meaning of chapter 19, Acts of 1901, requiring safety guards in "manufacturing, mechanical, and other establishments," Judge Poffenbarger, for the court, said:

The gravamen of the second count of the amended declaration is failure to guard the wringer or extractor, or provide a cover of some sort for it. A steam laundry may not be a manufacturing establishment, but it is mechanical in the sense that it is filled with running machinery. Whether this is the sense in which the word "mechanical" was used or not, such a laundry is an establishment "where the machinery, belting, shaftings, gearings, drums, and elevators" are so arranged and placed as to be dangerous to persons employed therein.

The judge then considered the question as to whether the machinery was of such a nature as to be dangerous to the employee and impose upon the master the duty to put a cover or guard over it, and gave his opinion that the evidence submitted was sufficient to carry the question to the jury. He then took up the contention that McClary had assumed the danger of injury as a risk of his employment and said:

If the omitted duty had been one imposed by the common law, the plaintiff's right of action would be precluded by his assumption of the risk of the injury he suffered. He knew as much about the plant and machinery as the master himself, having worked there for nearly four years and in many other similar places. But the duty left unperformed by the master was a statutory one, and the great weight of authority is to the effect that a servant working around unguarded machinery which the statute requires to be guarded does not assume the risk of such injury as may ensue. The statute does not in terms eliminate assumption of risk, nor say the omission of duty shall be negligence on the part of the master. But, to make the statute effective, it is necessary to exclude the assumption of risk and give a right of action for the omission of duty.

EMPLOYERS' LIABILITY—GUARDS FOR DANGEROUS MACHINERY—
NEGLIGENCE—*Phillips v. Hamilton Brown Shoe Co., Kansas City Court of Appeals (Apr. 6, 1914), 165 Southwestern Reporter, page 1183.*—Champ Phillips brought action against the company named for personal injuries sustained by him by the breaking of the steel driver of a shoe-tacking machine which was not guarded, and the consequent flying of particles which caused the loss of an eye. Sec-

tion 7828, Revised Statutes of Missouri, 1909, requires the machinery in all manufacturing, mechanical, and other establishments in the State, when so placed as to be dangerous to persons employed therein or thereabouts while engaged in their ordinary duties to be safely and securely guarded when possible.

Phillips was 18 years of age at the time of the accident. The machine which he was using breaks off and drives into the shoes as tacks pieces of wire at the rate of 400 per minute. The driver, which was necessarily small and of highly tempered steel, frequently broke and flew with great force, sufficient to pierce the skin of an operator. The plaintiff had been working at the machine for five weeks before the injury. He was obliged while at his work to stand facing the machine and about two feet from it. The result of the trial in the circuit court of Boone County was a judgment in the plaintiff's favor, from which the company appealed.

The following extract from the opinion of the court of appeals, as delivered by Judge Trimble, shows the grounds on which the judgment below was affirmed:

The main question to be disposed of is: Does the statute apply to a case of this kind, where the injury is not caused by the employee coming into contact with an unguarded machine, but is caused by the lack of a guard to prevent broken pieces from flying from the machine when such breakage is of such frequent and ordinary occurrence as to notify the master that the machine as located and operated is dangerous and likely to injure employees?

We can see no reason why the statute should be given the narrow construction contended for by defendant. The object of the statute is the safety of the employee. It would seem that if that safety would be imperiled either by the employee's inadvertently coming in contact with the machine or by the machine's working in such way as to give notice that it was likely to actively injure the employee the machine would be "dangerous to persons employed therein or thereabouts," within the meaning of the statute.

In the case before us, the negligence charged against the master is that it failed to guard when it could have done so. The evidence tends to show that the failure to guard was the real cause of the injury, and nothing that the plaintiff did or failed to do had any part therein. In all of the cases cited as holding the plaintiff guilty of contributory negligence, such negligence was bottomed on some act, or omission to act, on the part of the employee which he should not or should have performed in the exercise of the prudence of an ordinary man.

EMPLOYERS' LIABILITY—GUARDS FOR DANGEROUS MACHINERY—
PROXIMATE CAUSE—DAMAGES—*Cincinnati, Hamilton & Dayton
Railway Co. v. Armuth, Supreme Court of Indiana (Dec. 19, 1913),
103 Northeastern Reporter, page 738.*—Henry F. Armuth brought
action against the railway company named for damages for personal

injury, because of the failure of the company to conform to the statute requiring the guarding of dangerous machinery. (Burns, A. S. 1908, secs. 8021-8052.) The employee's hand slipped from a lever which he was operating, into unguarded cogwheels a few inches away, causing the loss of two fingers. He had secured a verdict in the circuit court of Marion County, and the company appealed. The court held that the failure to guard the machinery and the slipping of the hand were concurring causes of the injury, and that the former, being in violation of statute, was the proximate cause; so that the company was liable unless the slipping of the employee's hand was due to his fault, which question was for the jury. There was therefore no ground for reversal of the judgment on this point, but it was reversed and a new trial granted the defendant because the trial judge had erred in allowing the jury to consider as elements of damages the employee's loss of time and expense for medical and hospital treatment, although the complaint alleged and the evidence implied only that there were such loss and such expense, without showing the amount of same.

EMPLOYERS' LIABILITY—GUARDS FOR DANGEROUS MACHINERY—SAFETY FROM LOCATION—*Smith v. Mt. Clemens Sugar Co., Supreme Court of Michigan (Mar. 26, 1914), 146 Northwestern Reporter, page 263.*—George W. Smith brought action for damages for personal injuries received while employed by the company named in looking after the juice pumps at its factory, and from a judgment in his favor the company appealed. Each of the pumps was connected with a tank 8 feet high. Above the tanks was a lime conveyor, an iron trough 2½ feet in diameter, through which ran a spiral attachment, which pushed the refuse lime along until it was finally discharged into the sewer. A stream of water ran into the conveyor, and was controlled by a valve 9 feet from the floor, which plaintiff found it necessary to operate to increase the flow of water. After turning on the water, he started to come down the ladder, which had been broken and mended, and one of its sides gave way. His left hand went into a gearing 3 feet away, and he received an injury such as to necessitate the amputation of his arm between the elbow and wrist. The cog gear was about 9 feet from the floor, and was not guarded in accordance with the statute requiring the guarding of gearing and other dangerous machinery. As to the question whether the statute applied to this gearing the court, speaking by Judge Brooke, said:

It is urged that defendant's motion for a directed verdict should have been granted upon the ground that under the facts in this case

the statute relied upon can not apply, and therefore that no negligence on the part of the defendant was shown. It is said that the gears in question, situated as they were some 9 feet from the floor, were safeguarded by their position. If, as the evidence introduced by plaintiff seems to show, it became necessary for one or other of the employees of defendant many times each day to mount a ladder and attend to a portion of the work within 3 feet of the exposed gearing, we think it can scarcely be said, as a matter of law, that the "position" was an adequate safeguard. Indeed, it may well be doubted whether an exposed gearing can be placed in any position which as a matter of law would be considered as an equivalent to the statutory safeguard. But at all events the charge upon the subject was as favorable to defendant as it was entitled to demand.

The judgment was therefore affirmed.

EMPLOYERS' LIABILITY—GUARDS FOR DANGEROUS MACHINERY—SAWS—*Pulse et al. v. Spencer, Appellate Court of Indiana (May 20, 1914), 105 Northeastern Reporter, page 263.*—Ruben Spencer was injured, as was alleged, by the failure of his employers properly to guard a saw. The principal use of the saw which caused the injury was that of cambering joists. When it was used for that purpose, it could not be guarded in the rear by a spreader, but for the work which the employee was doing at the time of the accident the spreader might have been in place, but was not. The saw was operated exclusively by this employee, and the defendant contended at the trial, and asked an instruction to the effect, that his removal of the guard, if it took place, was negligence per se.

The circuit court of Bartholomew County rendered judgment in favor of the plaintiff, and the appellate court affirmed this judgment, holding, among other things, that the instruction mentioned was properly refused. On this point Judge Lairy expressed the opinion of the court as follows:

Under some circumstances a guard required by statute may be removed without constituting a violation of the statute. The act itself provides that such a guard may be removed for the purpose of making repairs, and the courts have held that machinery is not required to be guarded when the use of guards would materially interfere with its usefulness. The evidence in this case shows that the principal purpose for which the saw in question was used was that of cambering joists, and that, when used for such purpose, the use of a spreader or guard was impracticable. In view of this evidence, the spreader might be properly removed when the saw was used for cambering joists, and such a removal would not constitute a violation of the statute, and would not be negligence per se.

EMPLOYERS' LIABILITY—MINE REGULATIONS—CERTIFIED FOREMAN—TRIAL BY JURY—*Myers v. Pittsburgh Coal Co., United States Supreme Court (Apr. 6, 1914), 34 Supreme Court Reporter, page 559.*—John Myers was killed while employed by the coal company in the movement of coal cars in the mine. His widow brought an action in the United States Circuit Court for the Western District of Pennsylvania to recover for his death, alleged to have been caused by the negligence of the coal company. A judgment rendered in her favor was reversed by the circuit court of appeals, without directing a new trial and without sending the case back to the trial court. The case was then brought to the United States Supreme Court on writ of certiorari, where the judgment of the circuit court of appeals was reversed and the judgment of the trial court against the coal company was affirmed. The action of the circuit court of appeals was based largely upon the want of definite proof as to the manner in which Myers came to his death, but the Supreme Court held that there was ample testimony to submit to the jury, and that the trial court properly left the question to the jury upon testimony which, when fairly considered, might sustain the verdict.

The coal company objected to the charge given to the jury as to its liability when the mine was in charge of a duly qualified mine foreman. In disposing of this objection, Mr. Justice Day said:

The record shows that there was testimony tending to show that the electrical system was in charge of the electrician of the coal company employed as superintendent of electrical equipment, who had charge of the purchase, installation, care, operation, and maintenance of the electrical equipment used by the company, and who was not subject to the mine foreman. The court submitted to the jury the question whether the coal company had committed to the mine foreman the electrical system of hauling in the interior of the mine, or whether such system was in charge of an electrical engineer not accountable to the mine foreman, distinctly telling the jury that if the mine foreman was in charge in this respect, the company would not be responsible, but if they found that the coal company had excluded from the control of the mine foreman the electric haulage system, and that the negligence of the coal company was the direct and proximate cause of the death of the plaintiff's husband, there must be a recovery. The charge in this respect was as favorable as the company was entitled to have given.

EMPLOYERS' LIABILITY—MINE REGULATIONS—DUTY OF FOREMAN—ASSUMPTION OF RISKS—*Humphreys v. Raleigh Coal & Coke Co., Supreme Court of Appeals of West Virginia (Jan. 14, 1914), 80 Southeastern Reporter, page 803.*—Humphreys, an employee of the coal company, obtained a judgment against the company in the circuit court of Raleigh County, W. Va., for an injury sustained in

February, 1911, by coming in contact with an uninsulated wire used as a feed wire to an electric pump. In affirming the judgment of the lower court, Judge Poffenbarger, speaking for the supreme court of appeals, said:

Nothing in the statute imposing upon operators duty to employ mine foremen, and exonerating them from liability for the consequences of the negligence of such employees acting within the scope of their statutory powers, absolves the employer from duty to equip the mine or plant with suitable machinery and appliances for the prosecution of the work. To the foreman, the statute commits the control and supervision of the inside workings or actual operation of the mine, including the use of machinery and appliances furnished by his employer.

Both the pump and the wire must necessarily have been furnished by the defendant, for obviously there was no duty upon any other person to supply them. If no feed wire was supplied, and, in consequence of lack thereof, the foreman had to improvise the one used, it was none the less furnished by the defendant in the legal sense, for the mine foreman was his agent, and what a man does through or by another he does himself. Manifestly the wire was an instrumentality or appliance for use, or at least used, in the operation of the pump. Provision of such things, suitable for the purposes for which they are used, and reasonably safe as regards the person of the servant, is a nondelegable duty of the master imposed by the common law, from which he is not absolved by the terms or general purpose of the mine-foreman statute.

EMPLOYERS' LIABILITY—MINE REGULATIONS—FAILURE TO EMPLOY MINING BOSS—*Baisdrenghien v. Missouri, Kansas & Texas Railway Co.*, *Supreme Court of Kansas* (Mar. 7, 1914), 139 *Pacific Reporter*, page 428.—The plaintiff was injured by a falling rock while employed by the company named as a miner. The trial jury rendered a verdict in his favor, and this the supreme court upheld. There was evidence that the failure of the company to provide a mining boss to inspect the mine was the proximate cause of the injury. As to the effect of this provision of statute and the failure to observe it the court, speaking by Judge Smith, said:

The statute requires the owner or operator of a mine to "employ a competent and practical inside overseer, to be called 'mining boss,' who shall keep a careful watch over * * * traveling ways, * * * and shall see that as the miners advance their excavations all loose coal [coal], slate and rock overhead are carefully secured from falling in upon the traveling ways." Any omission of this requirement which, by diligent compliance therewith, would have obviated an injury to a miner renders the owner or operator liable in damages. The law to this extent entirely shifts the risks of the employment from the laborer to the employer. Care for his own safety may impel a miner to watch for treacherous mine roofs, but he is not legally required to do so, but may rely upon the presumption that the mining boss or overseer has fully performed his duty.

EMPLOYERS' LIABILITY—MINE REGULATIONS—INSPECTION—*Piazzi v. Kerens-Donnewald Coal Co., Supreme Court of Illinois (Feb. 21, 1914), 104 Northeastern Reporter, page 200.*—Adolph Piazzi recovered a judgment in the circuit court of Madison County for \$1,500 against the company named, for personal injuries. This was affirmed in the appellate court, from which the case was taken up on certiorari. Piazzi with another man was cleaning up a crosscut in a mine which had been closed for several months. They attempted to remove a clod in the roof, which had not been marked as dangerous by the mine inspector, but not succeeding, went to work under it, when it fell, injuring the plaintiff.

The company contended that, since the men were engaged in making dangerous places safe, they assumed the risks of their employment; also that they were guilty of contributory negligence in working under the clod. As to these matters the court, speaking by Judge Dunn, said:

All the men in the mine were working under the direction of the mine manager, and according to the testimony of the assistant mine manager all were under general directions to make dangerous places safe. But these instructions did not relieve the owner from the duty of having the mine examined, the mine examiner from the duty of marking dangerous places, or the mine manager from the duty of having danger signals placed.

Whether the failure of the mine examiner to mark the place was the proximate cause of the injury was a question of fact for the jury. The plaintiff had a right to rely upon the performance of the mine examiner's duty, and the absence of a mark indicated the opinion of the mine examiner that the clod was not dangerous. The plaintiff can not be held guilty of contributory negligence in working under the clod. If it had been marked dangerous, he would probably not have given up the effort to get it down, and gone under it to work, and would not have been hurt.

The judgment of the appellate court is affirmed.

EMPLOYERS' LIABILITY—MINE REGULATIONS—LEAD AND ZINC MINES—APPLICATION OF STATUTE—*Big Jack Mining Co. v. Parkinson, Supreme Court of Oklahoma (Dec. 20, 1913), 137 Pacific Reporter, page 678.*—Parkinson was employed as a miner in a lead and zinc mine of the company named. He was killed on July 6, 1910, by a fall of rock from the roof of the drift in which he was working. His widow obtained a judgment in the district court of Ottawa County, Okla., against the company, and the case was then taken to the State supreme court on error, where the judgment was affirmed.

A point of considerable interest was as to the application of the mining law of the State to the case in hand, the company claiming that it was not applicable to mines of the class in which the deceased workman was employed.

This contention was rejected by the court, Judge Galbraith, who delivered the opinion, saying in part:

We do not believe that the legislature intended to provide with such minute care for the protection of workers in coal mines, and to leave similar workers in lead and zinc mines without any protection whatever, particularly when these statutes bear such conclusive evidence that they were intended by the legislature to protect the laborer not only in coal mines but in every other mine that may be operated within the State. We are constrained to hold that the trial court correctly interpreted the meaning, purpose, and intent of the legislature in enacting these statutes, and in holding that the duty imposed on the operator of a mine thereby was a duty that the plaintiff in error owed to the deceased in this instance.

EMPLOYERS' LIABILITY—MINE REGULATIONS—VIOLATION OF STATUTE—ASSUMPTION OF RISKS—FELLOW SERVICE—*Maronen et al. v. Anaconda Copper Mining Co., Supreme Court of Montana (Nov. 24, 1913), 136 Pacific Reporter, page 968.*—August Maronen was employed in the company's mine and was killed in September, 1911, while being hoisted through a shaft, by falling from the cage, the fall being due to the fact that the cage doors were not closed. Section 8536, Revised Codes, Montana, provides that cages must be equipped with steel doors and that such doors "must be closed when lowering or hoisting the men." Maronen's widow and children brought suit against the company in the district court, Silver Bow County, where judgment was for the company. This judgment was affirmed by the Supreme Court of Montana.

The evidence submitted showed that no station tenders were employed to close the cage doors, but a rule adopted required the first man who entered a cage to close the doors before the cage was hoisted. It appeared that Maronen had entered the cage first and had not closed the doors before the signal was given to hoist the cage. After reviewing the law and evidence; Judge Holloway, for the court, concluded:

Our conclusion is that the trial court was justified in finding that Maronen was to all intents and purposes a station tender in the sense that it was his duty to close the door when he entered the cage to be hoisted, and that his death resulted from his failure to discharge a duty which could be and was rightfully imposed upon him; and, because he could not have succeeded upon these facts in an action if he had been injured only, neither his heirs nor personal representatives can succeed in this one.

EMPLOYERS' LIABILITY—NEGLIGENCE—EVIDENCE—GUARDS FOR DANGEROUS MACHINERY—*Byland v. E. I. du Pont de Nemours Powder Co., Supreme Court of Kansas (Nov. 14, 1914), 144 Pacific Reporter,*

page 251.—Tobias Byland was an employee of the company named, and was injured and sued the company. Judgment was for the defendant in the district court of Cherokee County, and this was affirmed on appeal. The questions decided are sufficiently shown in the syllabus prepared by the court, which is as follows:

In an action to recover for injuries caused by the explosion of defendant's powder mill, there was no substantial evidence, direct or circumstantial, fairly tending to prove what actually caused the explosion. Held, following *Brown v. Railroad Co.*, 81 Kans. 701, 106 Pac. 1001, "it is not sufficient to show circumstances which would indicate that the other party might have been guilty of negligence, especially when the evidence furnished suggests, with equal force, that the injury might have resulted without fault on the part of the other party"; and that the court rightly sustained a demurrer to the evidence.

Where, in an action founded upon negligence, the plaintiff alleges specifically the negligent acts of the defendant upon which he relies to recover, he must prove the negligence alleged, and will not be allowed to make a *prima facie* case relying upon the doctrine of *res ipsa loquitur*.

Plaintiff was injured by the explosion of defendant's powder mill, and alleged, among other acts of negligence, failure of the defendant to provide some appliance to prevent metallic thumb nuts from falling through a defective screen, and alleged that, by reason of the absence of such an appliance, metallic thumb nuts found their way into the inflammable mixture and caused the explosion. At the time the explosion occurred, the plaintiff was not at work near the machine, but stood outside the building, where it was located, and 50 feet therefrom. He was not injured by the thumb nuts falling upon him nor by coming in contact with the machine. Held, that the provisions of the factory act (section 4679, Gen. Stat. 1909), requiring machinery to be properly and safely guarded for the purpose of preventing or avoiding injury to employees in factories, has no application, and that plaintiff could not maintain an action under the statute.

EMPLOYERS' LIABILITY—PENSION FUNDS—ELECTION OF RIGHTS—*Longfellow et al. v. City of Seattle, Supreme Court of Washington (Dec. 4, 1913), 136 Pacific Reporter, page 855.*—A statute of the State of Washington empowers incorporated cities and towns having a paid fire department to compensate the widows and dependents under 16 years of age of firemen killed while on duty, by granting a pension equal to one-half the salary being received by the fireman at the time of his death. The city of Seattle made the statute operative within that city. James Longfellow was thrown from a fire wagon in November, 1910, and killed. The widow filed a claim for a pension for herself and minor children, one of whom was a daughter between 16 and 17 years of age. The claim of the widow was allowed and payments were made to her, beginning in January, 1911. In December, 1910,

the widow also filed a claim for damages for \$10,000 for the death of her husband, due to the wrongful and negligent act of the city. The claim was rejected and in September, 1911, she brought suit in the superior court of King County for the sum of \$8,500 in her own right and for \$1,500 as guardian of her daughter Myrtle, who was over 16 years of age. The city contended that the acceptance of benefits from the pension fund barred a right of action for damages and judgment was entered for the city. An appeal was taken to the supreme court of the State where it was decided that by accepting benefits from the pension fund the widow had barred her right to recover damages.

It was held, however, that as the daughter had no rights under the pension law she had a right of action in the courts.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—BLOCKING FROGS.—“YARDS”—*George v. Quincy, Omaha & Kansas City Railroad Co., Kansas City Court of Appeals (May 4, 1914), 167 Southwestern Reporter, page 153.*—Andrew P. George, a brakeman on the road of the company named, was killed on November 7, 1907, and his administrator brought action for his death. After switching out a car to the sidetrack at the station at Kirksville, the brakeman was recoupling the two separated portions of the train, when his foot became caught in an unblocked frog, and as a result he was run down and instantly killed.

Section 3163, Revised Statutes, Missouri, 1909, required the company, on or before September 1, 1907, “to adopt, put in use, and maintain the best known appliances or inventions to fill or block all switches, frogs, and guardrails on their road, in all yards, divisional and terminal stations, and where trains are made up, to prevent, as far as possible, the feet of employees or other persons from being caught therein.”

The company made claim that the location of the frog was not in a “yard” under the meaning of the statute. The court held, on the contrary, that the portion of the tracks around every station, used for the purpose of switching or standing cars, is a yard.

On rehearing, the court also decided that the statute was not invalid for uncertainty or impossibility of performance in requiring “the best known appliances or inventions” to be used.

EMPLOYERS' LIABILITY — RAILROAD COMPANIES — “CARS” — *McGrady v. Charlotte Harbor & Northern Railway Co., Supreme Court of Florida (Jan. 9, 1914), 63 Southern Reporter, page 921.*—Will McGrady brought suit against the railway company named for per-

sonal injuries suffered by the negligence of another employee while they were placing a hand car upon the track. The action was brought under the provisions of section 3150 of the General Statutes of 1906, which makes the company liable for injuries "caused by negligence of another employee by the running of the locomotives or cars, or other machinery of such company." A demurrer to the declaration was sustained in the circuit court of De Soto County, and judgment rendered for the company; on appeal, however, this judgment was reversed, the supreme court deciding that a hand car is a "car" within the meaning of the act, citing *Ryland v. Atlantic C. L. R. Co.*, 57 Fla. 143, 49 So. 745; *Thomas v. Georgia R. & B. Co.*, 38 Ga. 222, etc.; and that the placing of the hand car upon the track was a part of the running of such car, so that the accident came within the scope of the statute.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—CONTRIBUTORY NEGLIGENCE—PROXIMATE CAUSE—VIOLATION OF ORDINANCE—DAMAGES—*Wabash Railroad Co. v. Gretzinger*, *Supreme Court of Indiana* (Feb. 19, 1914), 104 *Northeastern Reporter*, page 69.—This action was brought by the administratrix of one Beedle, for the benefit of herself as widow and of her infant child, to obtain damages for the death of Beedle in a railroad collision. Beedle was conductor of a freight train, which ran upon a siding in the city of Delphi, so that the rear end was 250 feet from the switch target, upon which the switch leading to the siding was closed and locked. Beedle attended to various duties, secured his orders, and went into the caboose to begin making up a report. In the meantime the switch had evidently been opened by some unknown person. A passenger train then approached at a rate of about 20 miles an hour, and when about 300 feet from the target the engineer saw that it indicated an open switch, and applied the air brakes, but was unable to prevent the collision in which Beedle was killed. A city ordinance required that trains should slow up to 6 miles an hour while passing through the city. If the train had been running at the required rate, it could have been easily stopped in time. Judgment was in the plaintiff's favor in the circuit court of Howard County, and was on appeal affirmed on grounds which appear in the following quotation from the opinion of the court, which was delivered by Judge Morris:

Appellant claims that, because Beedle knew that the passenger train was in the habit of exceeding the ordinance speed limit at this place, he thereby assumed the risk of danger. Such doctrine can not be recognized. Violations of ordinances, however often repeated, do not render them obsolete.

The engineer of the passenger train, in exceeding the lawful speed limit, was thereby guilty of negligence per se. Appellee's decedent assumed no risk of danger from such negligence. [Cases cited.]

While it is true that the accident would not have happened in the absence of the open condition of the switch, it is also true that it would not have happened had the speed of the passenger train not exceeded 6 miles per hour. Where two causes result in an accident, the question of the dominant or proximate one is ordinarily for the jury.

The evidence here warranted the jury in finding that the unlawful speed was the proximate cause of the injury, as alleged in the complaint.

Beedle was 26 years old, healthy, temperate, and industrious, and had already risen to be conductor, his salary being \$100 per month, of which amount he turned over \$70 to his wife and child. Under these circumstances the court decided that the verdict of \$10,000, the statutory limit, rendered by the jury in the circuit court of Howard County was not excessive; also that the fact that the widow had remarried should not be considered in awarding damages. The judgment of the court below was consequently affirmed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—ELECTRIC RAILROADS—*Hughes v. Indiana Union Traction Co.*, Appellate Court of Indiana (June 3, 1914), 105 *Northeastern Reporter*, page 537.—Earl Hughes, a motorman on an interurban electric railroad of the company named, was injured on August 13, 1908, by the alleged negligence of his fellow employees on the car. This was a repair car, and the other employees had entire charge of the loading with materials. A pike pole fell off and struck and injured the motorman while he was operating the car. The coemployees' liability act of Indiana, Burns' A. S. 1908, section 8017, provides that railroads shall be liable for injuries to employees resulting from the negligence of other employees in certain cases. The court affirmed a judgment of the circuit court of Tipton County in favor of the defendant company, Judge Shea, in delivering the opinion, reviewing the history of legislation and decisions creating a distinction between steam and electrically operated railroads, and holding that the act did not apply to the latter.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL AND STATE STATUTES—*Wabash Railroad Co. v. Hayes*, *United States Supreme Court* (May 25, 1914), 34 *Supreme Court Reporter*, page 729.—This case was before the Supreme Court on a writ of error to the appellate court of Illinois to review a judgment in favor of John R. Hayes, who was injured while in the employment of the appellant company. The point of interest is the ruling of the Supreme Court as to the application of the Federal statute of 1908. In the original action the plaintiff Hayes had set forth a good cause of action under the Federal statute,

and alleged that the injuries complained of were received while he was engaged by the company in interstate commerce. On the trial it appeared that the injury was not received in such commerce, and it was ruled that the Federal act had no application to the case. The court then ruled that the case might be heard on the declaration and determined according to the principles of common law prevailing in the State, the company contending that "even though the allegation that the injury occurred in interstate commerce proved unwarranted, the declaration could not be treated, consistently with the Federal act, as containing any basis for a recovery under the law of the State, common or statutory." This contention was rejected by the appellate court of Illinois, and the Supreme Court, in its opinion which was delivered by Mr. Justice Van Devanter, sustained its position, as appears from the following quotations:

Had the injury occurred in interstate commerce, as was alleged, the Federal act undoubtedly would have been controlling, and a recovery could not have been had under the common or statute law of the State; in other words, the Federal act would have been exclusive in its operation, not merely cumulative.

On the other hand, if the injury occurred outside of interstate commerce, the Federal act was without application, and the law of the State was controlling.

The plaintiff asserted only one right to recover for the injury, and in the nature of things he could have but one. Whether it arose under the Federal act or under the State law, it was equally cognizable in the State court; and had it been presented in an alternative way in separate counts, one containing and another omitting the allegation that the injury occurred in interstate commerce, the propriety of proceeding to a judgment under the latter count, after it appeared that the first could not be sustained, doubtless would have been freely conceded. Certainly, nothing in the Federal act would have been in the way.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL AND STATE STATUTES—DEATH OF EMPLOYEE WITHOUT DEPENDENTS—*Jones v. Charleston & Western Carolina Railway Co., Supreme Court of South Carolina (July 16, 1914), 82 Southeastern Reporter, page 415.*—This action was brought by the administrator to recover damages for the death of E. D. Clary, for the benefit of his brother and sister. The deceased had not married, and his father and mother were dead. The circuit court of Abbeville County directed a verdict for the defendant on the ground that the Federal employers' liability act superseded the State statute on the same subject, under which this action was brought. As the Federal act allows no compensation in case of death except to dependents, and there was no direct evidence that the brother and sister were dependent, it was held that no action would lie. The supreme court affirmed the

judgment in favor of the railway company, Judge Hydrick, who delivered the opinion, discussing the question at issue as to the statute governing the case as follows:

Appellant contends that, as the act of Congress gives a right of action in favor of dependent relatives, while the State statute gives the right in favor of relatives, whether dependent or not, the two statutes do not cover precisely the same field, and therefore the State statute was not superseded, in so far as it gives a right of action in favor of relatives who are not dependent. This is a misconception of the scope of the legislation of Congress. It deals with the liability of interstate carriers by railroad for injuries to their employees while both are engaged in interstate commerce. It creates and determines that liability. It is paramount and exclusive, and necessarily supersedes the State law upon that subject. Therefore the liability of such carriers for such injuries must be tested solely by the act of Congress, which can not be pieced out by the State law on the same subject. [Cases cited.]

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL AND STATE STATUTES—PERSONS ENTITLED TO BENEFITS—*Taylor v. Taylor, United States Supreme Court (Feb. 24, 1914), 34 Supreme Court Reporter, page 350.*—The plaintiff is the widow and the defendant the father of one Howard Taylor, who was killed through the negligence of an interstate railroad company, by whom he was employed. The widow, as administratrix, brought suit against the railroad company for damages, under the act of Congress of April 22, 1908, known as the employers' liability law, and recovered a judgment in her favor. The father of the decedent then filed a petition in the supreme court of Orange County, N. Y., for an order directing the widow to pay over to him one-half the net proceeds of the judgment in accordance with the statute of distribution of the State. The motion was denied and an order entered that the widow was entitled to receive and retain for her own use all the net proceeds of the judgment. This order was reversed by the appellate division of the supreme court and the judgment of reversal was affirmed by the Court of Appeals of New York. The case was then brought to the United States Supreme Court on error, the widow contending that the Federal statute should govern the distribution of the proceeds of the judgment, instead of the State law. The United States Supreme Court upheld the contention of the widow and reversed the New York State Court of Appeals, which had held that the State law applied.

Mr. Justice McKenna, who delivered the opinion of the court, after reviewing a number of cases, said in part:

It is clear from these decisions that the source of the right of plaintiff in error was the Federal statute. As said in one of the cited

cases, her cause of action was "one beyond that which the decedent had,—one proceeding upon altogether different principles." It came to her, it is true, on account of his death, but because of her pecuniary interest in his life and the damage she suffered by his death. It was her loss, not that which his father may have suffered. The judgment she recovered was for herself alone. He had no interest in it. Any loss he may have suffered was not and could not have been any part of it, as we have seen.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL AND STATE STATUTES—SAFETY APPLIANCES—*Seaboard Air Line Railway Co. v. Horton, Supreme Court of the United States (Apr. 27, 1914), 34 Supreme Court Reporter, page 635.*—James T. Horton brought action against the railway company named for damages for personal injuries under the Federal employers' liability act, in the superior court of Wake County, N. C. His injuries were caused by the bursting of an engine water glass which was not protected by a guard glass. Judgment was in his favor, and this was affirmed by the Supreme Court of North Carolina, but was reversed by the United States Supreme Court. In the trial court the judge had appeared to consider the State laws on the subject as in force as well as the Federal statute, as far as not inconsistent with the latter; but Mr. Justice Pitney, in delivering the opinion of the Supreme Court of the United States, said:

It is settled that since Congress, by the act of 1908, took possession of the field of the employer's liability to employees in interstate transportation by rail, all State laws upon the subject are superseded. *Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 55.*

The Federal statute bars the defenses of contributory negligence and assumption of risk in any case where the violation by the common carrier of any statute enacted for the safety of employees contributed to the injury or death of the employee.

As to the application of these provisions the court said:

By the phrase "any statute enacted for the safety of employees," Congress evidently intended Federal statutes, such as the safety appliance acts and the hours of service act. For it is not to be conceived that, in enacting a general law for establishing and enforcing the responsibility of common carriers by railroad to their employees in interstate commerce, Congress intended to permit the legislatures of the several States to determine the effect of contributory negligence and assumption of risk, by enacting statutes for the safety of employees, since this would in effect relegate to State control two of the essential factors that determine the responsibility of the employer.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—ASSUMPTION OF RISKS—SAFE PLACE—*Farley v. New York, New Haven & Hartford Railroad Co., Supreme Court of Errors of Connecticut (July 13, 1914), 91 Atlantic Reporter, page 650.*—Action was brought by the administrator of the estate of John H. Bottomley for the death of the latter while employed as engineer on the road of the company named. He was in charge of a locomotive hauling an interstate freight train, and was killed by contact with or proximity to an electric wire over the center of the track, when going back over the tender to ascertain the height of the water. The wires were used for electrical operation of the passenger trains over a section of the road. They were, where no bridge made it necessary to lower them, 22½ feet above the level of the top of the rails. Under the bridge where the accident occurred they were brought down to a height of 15 feet 4½ inches. The locomotive was of medium size and of a type in long and common use on the road, the tenders varying in height from 10½ to 13 feet. Bridges were numerous on the part of the road where the accident happened, and the wires under them came down to varying heights, from the height of the one in question to about 18 feet. The engineer had been over the electrified section frequently, more often in the daytime; the electrification had taken place more than three years before the occurrence of the accident on September 28, 1911, and he had been employed during all that time. The time-tables furnished him contained a notice that there was danger within 14 inches of the wires, and he had signed a receipt for a special notice to that effect.

Judgment in the superior court of New Haven County was for the defendant company, on the ground that the employee had assumed the risks of his situation, and the plaintiff appealed. The judgment was affirmed, however, the court saying that the Federal employers' liability act abolished the defense of assumption of risk only in cases where the violation of safety statutes contributes to the injury or death.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—BENEFICIARIES—NEXT OF KIN—ILLEGITIMATE CHILDREN—*Kenney v. Seaboard Air Line Railway Co., Supreme Court of North Carolina (Sept. 30, 1914), 82 Southeastern Reporter, page 968.*—This was an administrator's action to recover damages for the death of one born out of wedlock. The mother of the deceased employee was not living, but left two sons and a dependent daughter who were born in wedlock. The only question considered by the court was as to the right of action of the claimants under the Federal statute, which authorizes recovery for the benefit, among others, of the next

of kin dependent upon a deceased employee. The North Carolina Revisal, section 137, authorizes the distribution of the estate of a deceased illegitimate child dying without issue among his mother and "such persons as would be his next of kin if all such children had been born in lawful wedlock." The superior court of Bertie County rendered judgment in the plaintiff's favor, which was on appeal affirmed, two judges dissenting. Chief Justice Clark, who delivered the opinion of the court, cited *Cutting v. Cutting*, 6 Fed. 268, and *McCool v. Smith*, 66 U. S. 459, and said in part:

The object of the act of Congress was to permit a recovery for wrongful death or injuries on interstate railroads, and that the recovery should go to the next of kin in the cases specified; the next of kin being determined by the law of the State in which the action is brought, for the status of the citizen, and the statute regulating descent and distribution is purely a State matter with which Congress has no concern. By the reasoning in the case above cited the words "next of kin" are taken, like the word "heirs," as meaning those to whom the property would go, but who are the heirs and who are the next of kin is a matter purely of State regulation.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—CONTRIBUTORY NEGLIGENCE—*Pennsylvania Co. v. Cole*, *United States Circuit Court of Appeals, Sixth Circuit (June 15, 1914)*, 214 *Federal Reporter*, page 948.—Cole was rear brakeman and flagman on a freight train of the company named. He was injured by a collision when another train proceeding slowly on account of cautionary signals ran into the rear of his standing train while he was asleep in the caboose. It was urged that he was so negligent in not flagging the other train that all right of recovery was barred. In denying this contention and affirming a judgment of the trial court in the plaintiff's favor, Judge Knappen, who delivered the opinion of the court, said in part:

Under this act, no degree of negligence on the part of the plaintiff, however gross or proximate, can, as a matter of law, bar recovery; for, as said in *Norfolk & W. Ry Co. v. Earnest*, 229 U. S. 114, 122, 33 Sup. Ct. 654 [see Bul. No. 152, p. 92], the direction that the diminution shall be "in proportion to the amount of negligence attributable to such employee" means that:

"Where the causal negligence is partly attributable to him and partly to the carrier, he shall not recover full damages, but only a proportional amount bearing the same relation to the full amount as the negligence attributable to the carrier bears to the entire negligence attributable to both."

To say that plaintiff's negligence equals the combined negligence of plaintiff and defendant is impossible.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—EXCLUSIVE APPLICATION—INTERSTATE COMMERCE—JURISDICTION OF COURTS—"ON DUTY"—*North Carolina Railroad Co. v. Zachary*, *United States Supreme Court* (Feb. 2, 1914), 34 *Supreme Court Reporter*, page 305.—James A. Zachary brought suit in the superior court of Guilford County, N. C., to recover damages for the negligent killing of one Burgess, an employee of the Southern Railway Co., which occurred in April, 1909. Under the State law the lessor is responsible for all acts of negligence of its lessee occurring in the conduct of business upon the lessor's road (*Logan v. North Carolina R. Co.*, 116 N. C. 940, 21 S. E. 959), upon the ground that a railroad corporation can not evade its public duty and responsibility by leasing its road to another corporation, in the absence of a statute expressly exempting it. The responsibility is held to extend to employees of the lessee injured through the negligence of the latter.

The Southern Railway Co. was the lessee of the North Carolina Railroad Co., and action was brought against the latter company under the State law. Judgment was rendered against the company in the lower court and affirmed by the Supreme Court of North Carolina. The case was then taken to the United States Supreme Court on error, where the judgment was reversed and the cause remanded for further proceedings, the contention of the railroad company that suit should have been brought under the Federal employers' liability act of April 22, 1908, instead of under the State law, being upheld.

The following language, taken from the opinion delivered by Mr. Justice Pitney, sets forth the grounds on which the conclusion of the court was reached:

In order to bring the case within the terms of the Federal act defendant must have been, at the time of the occurrence in question engaged as a common carrier in interstate commerce, and plaintiff's intestate must have been employed by said carrier in such commerce. If these facts appeared, the Federal act governed, to the exclusion of the statutes of the State. [Cases cited.]

Having found that the employer was an interstate carrier, Justice Pitney took up the point of Burgess's employment, as follows:

It was, however, further held by the Supreme Court of North Carolina that deceased, at the time he was killed, was not in fact employed by the Southern Railway, the lessee, in interstate commerce.

It is argued that because, so far as appears, deceased had not previously participated in any movement of interstate freight, and the through cars had not as yet been attached to his engine, his employment in interstate commerce was still in futuro. It seems to us, however, that his acts in inspecting, oiling, firing, and preparing his engine for the trip to Selma were acts performed as a part of interstate commerce and the circumstance that the interstate freight cars had not as yet been coupled up is legally insignificant. [Cases cited.]

Again, it is said that because deceased had left his engine and was going to his boarding house, he was engaged upon a personal errand, and not upon the carrier's business. Assuming (what is not clear) that the evidence fairly tended to indicate the boarding house as his destination, it nevertheless also appears that deceased was shortly to depart upon his run, having just prepared his engine for the purpose, and that he had not gone beyond the limits of the railroad yard when he was struck. There is nothing to indicate that this brief visit to the boarding house was at all out of the ordinary, or was inconsistent with his duty to his employer. It seems to us clear that the man was still "on duty," and employed in commerce, notwithstanding his temporary absence from the locomotive engine. [Cases cited.]

We conclude that, with respect to the facts necessary to bring the case within the Federal act, there was evidence that at least was sufficient to go to the jury. It is doubtful whether there was substantial contradiction respecting any of these facts; but this we need not consider.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—EXEMPTION FROM LIABILITY—RELIEF ASSOCIATIONS—*Hogarty v. Philadelphia & Reading Railway Co., Supreme Court of Pennsylvania (May 22, 1914), 91 Atlantic Reporter, page 854.*—William J. Hogarty, an employee of the company named, lost his right arm on February 1, 1910. It was alleged in the declaration that the injury was due to the negligent construction and maintenance of the defendant's road. The court of common pleas of Philadelphia County first gave binding instructions for the defendant, and then entered judgment in its favor, and the plaintiff appealed. The defense set up was that the plaintiff had accepted benefits as a member of its relief association. The plaintiff rejoining that the Federal employers' liability act forbids this defense, the defendant claimed that the Federal act did not apply, as the plaintiff had pleaded at common law, or if it did, that there was a variance between the pleading and the proof. The plaintiff finally contended that, if he should formally have pleaded the Federal statute, he was entitled to amend accordingly.

The court held that the plaintiff was entitled to a trial of the case under the Federal act. Judge Moschzisker delivered the opinion, from which the following is an extract relating to the point mentioned:

The Federal statute was not brought into the case at bar until a special defense was entered upon, and then the plaintiff promptly drew attention to its express prohibition of all defenses of the character of the one offered; just as in the ordinary industrial accident case, although not formally pleaded, a plaintiff may claim the benefit of any particular provision in our fellow-servant act, or our factory act, if the circumstances call for it. True, the law depended upon at bar happened to be a Federal statute; but, since the Supreme Court of the United States has decided that this statute must be treated by State courts, in each instance, as though an act of their

own legislature, for all practical purposes it is a Pennsylvania statute, in the same category as the two acts to which we refer; and its provision that "any contract, rule, regulation, or device whatsoever," the purpose of which is to enable a common carrier to exempt itself from liability for negligence to its employees, "shall to that extent be void," is the announcement of a broad rule of public policy applicable to all cases within the scope of the statute, with like effect as though promulgated by one of our acts.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—BRAKEMAN PLACING CAR IN TRAIN—SAFETY APPLIANCES—*Thornbro v. Kansas City, Mexico & Orient Railway Co.*, Supreme Court of Kansas (Mar. 7, 1914), 139 Pacific Reporter, page 410.—Action was brought in the district court of Sumner County for the death of J. N. Thornbro from an injury received while in the employ of the company named. The judgment was in favor of the plaintiff, and this was affirmed on appeal. The action was based upon the Federal employers' liability act of 1908, and alleged also violation of the safety appliance act as taking away the defenses of assumption of risk and contributory negligence in accordance with the terms of the first-mentioned act.

The company was conceded to be engaged in interstate commerce, and the question was whether the employee at the time of the injury was also so engaged. A freight car, from a point in the State of Oklahoma and destined for another point in the same State, was to be taken up by the interstate train of which the decedent was a brakeman at Custer City. It had another car, which was not to be taken, in front of it on the siding. The engine hauled these cars to the main track, and the brakeman received his injuries in uncoupling the cars, by reason of having to go between the cars, because the car which was to be taken had a coupler which was not automatic, and was defective and unsafe.

As to the question of his inclusion under the terms of the employers' liability act the court, speaking by Judge Benson, said:

In order to recover under the act referred to, both the company and the employee must be engaged in interstate commerce at the time of the injury. Second Employers' Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169. The precise contention of the defendant is that the car in question, starting from one point, to be transported to another point in the same State, was an instrument of intrastate commerce; and that it had not become a part of an interstate train, and so the brakeman was not engaged in interstate commerce. On the other hand, the plaintiff contends that the duties of the engineer and brakeman in picking up this car and putting it into the train, consisting largely of interstate cars, carrying interstate freight, had such connection with interstate commerce as to bring their work within the purview of the act.

No decision of the Federal Supreme Court has been cited upon the precise point in controversy, and the circuit courts appear to be at variance.

Several cases bearing upon the question were reviewed and discussed quite fully at this point in the opinion, and the court continued:

Referring to the test applied in the Lamphere case [196 Fed. 336; see Bul. No. 112, p. 86]—"Was the relation of the employment of the deceased in interstate commerce such that the personal injury to him tended to delay or hinder the movement of a train engaged in interstate commerce"—an affirmative answer is as obvious here as there. It can not be doubted that the work of the deceased had a real and substantial relation to interstate commerce.

Taking up the contention that the coupler was defective and did not meet the requirements of the Federal safety appliance acts, the court briefly reviewed the acts in question, and said in part:

Construing these acts, the Federal Supreme Court, in *Southern Ry. Co. v. United States*, 222 U. S. 20, 32 Sup. Ct. 2, held that they were intended "to embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce." It must be regarded as settled that the car in question should have been equipped with a coupler as specified in the statute.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—BUILDING ADDITION TO FREIGHT SHED—*Eng v. Southern Pacific Co.*, *United States District Court, District of Oregon* (Dec. 22, 1913), 210 *Federal Reporter*, page 92.—The court, speaking by Judge Bean, in holding that the plaintiff's employment at the time of his injury was in interstate commerce, used the following language:

When a carrier is engaged in both intrastate and interstate commerce, using the same instrumentalities, appliances, and employees in both classes of commerce, it is difficult to draw the line of demarcation between the two classes of employment; but the result of the decisions up to this time seems to be that, when the work in which the employee was engaged at the time of his injury is so closely connected with interstate commerce as to be a part thereof, it comes within the statute. Now, freight sheds, depots, and warehouses or other facilities provided and used by a carrier for receiving, handling, and discharging interstate freight are, I take it, instrumentalities used in interstate commerce under the doctrine of the cases, and are so closely connected therewith as to be a part thereof for the purposes of the Federal employers' liability act.

Claim is made that, since plaintiff at the time of his injury was at work framing a new office in the freight shed, he is in the position of one employed to construct buildings, tracks, engines, or cars, which have not yet become instrumentalities of commerce. But the freight

shed in question was being so used by the defendant in its interstate business. The work in which the plaintiff was engaged, as appears from the complaint, was in the nature of the repair of an instrumentality so used, and not in the construction of new work.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—CONSTRUCTION OF BRIDGE ON CUT-OFF—*Bravis v. Chicago, Milwaukee & St. Paul Railway Co., United States Circuit Court of Appeals, Eighth Circuit (Oct. 12, 1914), 217 Federal Reporter, page 234.*—Nick Bravis sued the company named in the District Court of the United States for the District of Minnesota. Judgment was for the defendant on a directed verdict, and the plaintiff brought error. In his complaint the plaintiff pleaded negligence of the company, but did not allege that he or the company was engaged in interstate commerce. At the close of his evidence he made an amendment changing the single count of the complaint so as to bring the action under the Federal employers' liability act. The company admitted that it was engaged in interstate commerce, but denied that it employed the plaintiff in such commerce, and the court upheld its contention. The company was engaged in straightening curves in its road, and the plaintiff was employed in building a bridge on a cut-off to avoid a curve about 3 miles in length. The employee went from the nearest point on the railroad to the camp where he boarded, at Chanhassen, on a hand car furnished by the company. The gang in which he was employed consisted of about 15 men, and they used two hand cars to transport themselves from and to Chanhassen. As they were returning to camp one evening the plaintiff, who, with his companions, was engaged in pumping the forward hand car, fell off the rear of it, and the rear hand car ran over him and injured his right hand before the men upon it could stop it after they saw him.

In delivering the opinion of the court, affirming the judgment of the court below, Judge Sanborn said:

The chief contention of counsel for plaintiff in support of their specification of error in this case is that the facts established by the evidence sustain the conclusion that the plaintiff was employed in interstate commerce while constructing the bridge on the cut-off. But there were no rails on the roadbed on this cut-off. It never had been used, it was not then used, and until it should be ironed it could not be used, by the defendant in interstate commerce.

The Federal employers' liability act protects only those employed in interstate commerce. Those employed in the preparation or construction of roadbeds, rails, ties, cars, engines, and other instrumentalities which are intended for use in interstate commerce, but have never been and are not in use therein, are not employed in interstate commerce, and are not protected by that act. There was no error in

the ruling of the trial court that an employee engaged in the construction of a bridge, 600 feet distant from a railroad, on a cut-off more than a mile in length, which had never been provided with rails or used as a railroad, was not employed in interstate commerce, although his employer was engaged, and when the cut-off should be completed intended to use it, in interstate commerce. [Cases cited.]

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—CONSTRUCTION OF TUNNEL—*Jackson v. Chicago, Milwaukee & St. Paul Railway Co., United States District Court, Western District of Washington (Feb. 2, 1914), 210 Federal Reporter, page 495.*—This action was brought under the Federal employers' liability act of 1908, and the defendant company demurred to the complaint, which demurrer was sustained by the court, holding that there was no case presented under the act. The question raised is as to whether the employment was in interstate commerce, the fact being that the employee was at work in the construction of a tunnel which would be used in interstate commerce when completed. The court, speaking by Judge Neterer, said in part:

The plaintiff was not himself engaged upon any interstate commerce, nor was he injured by anyone connected with the operation of any of the agencies which actually transported interstate commerce. The building of this cut-off is a facility which is to be used by the defendant, when completed, as an engine or cars, or any other appliance under construction might be considered for use when completed. The act deals only with the liability of a carrier engaged in interstate commerce for injuries sustained by its employees while engaged in such commerce.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—EMPLOYEE CARRYING COAL TO HEAT REPAIR SHOP—*Cousins v. Illinois Central Railroad Co., Supreme Court of Minnesota (June 26, 1914), 148 Northwestern Reporter, page 58.*—Charles W. Cousins brought action against the railroad company named, under the Federal employers' liability act, for damages for injuries received while he was wheeling a barrow full of coal to one of the car repair shops. The only question was whether this employment brought him within the provisions of the act. Judge Bunn, in delivering the court's opinion affirming a judgment of the district court of Ramsey County in the plaintiff's favor, said in part:

The men in the shop were engaged in repairing cars that had been and were to be used in interstate commerce. Plaintiff, when he was injured, was wheeling coal to be used in heating the shop so that these men could do their work.

In *Pederson v. Delaware, Lackawanna & Western R. Co.*, 229 U. S. 146, 33 Sup. Ct. 648 [Bul. No. 152, p. 85], the court said:

"The true test always is: Is the work in question a part of the interstate commerce in which the carrier is engaged?"

It was held that a man carrying bolts to be used in repairing a railroad bridge over which interstate commerce moved was employed in interstate commerce. The court found no merit in the point that plaintiff was not actually repairing the bridge when injured, but was merely carrying to the place where the work was to be done some of the materials to be used therein, saying:

"It was necessary to the repair of the bridge that the materials be at hand, and the act of bringing them there was a part of the work. In other words, it was a minor task which was essentially a part of the larger one, as is the case where an engineer takes his engine from the roadhouse to the track on which are the cars he is to haul in interstate commerce."

That the men engaged in repairing the cars were employed in interstate commerce is well settled. That an employee carrying materials to the shop to be used in repairing the cars would be employed in interstate commerce the *Pederson* case decides. It seems no extension of the construction thus given to the statute to hold that an employee carrying coal for use in heating the shop where the repairs were made is employed in interstate commerce. The repairs could not be made unless the shop were heated. We think the *Pederson* case controls the case at bar.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—EMPLOYEE SLEEPING IN SHANTY CAR—*Sanders v. Charleston & W. C. Ry. Co.*, *Supreme Court of South Carolina* (Apr. 2, 1914), 81 *Southeastern Reporter*, page 283.—*Sanders* was employed by the railway company with an iron gang relaying rails. He was injured while asleep in his shanty car, on a train which stood on a sidetrack, which was struck by an incoming train. He brought suit in the common pleas circuit court of Edgefield County, under the Federal employers' liability act and obtained a judgment against the company. The company appealed the case to the State supreme court on the ground that at the time of the injury *Sanders* was not employed in interstate commerce. This court, however, decided that the employee was engaged in interstate commerce when injured, following the opinion in *Pederson v. Del. & L. W. Ry. Co.*, 229 U. S. 146, 33 Sup. Ct. 648. Judge Gage, who gave the opinion of the court, said:

When the plaintiff [*Sanders*] was in the bunk of his shanty car, in the "sleep that knits up the ravell'd sleeve of care," and getting strength to lay rails next day, the law imputed to him actual service on the track, and extended to him the rights of such a worker; "for the letter (of the law) killeth, but the spirit giveth life."

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—ENGINEER IN ROUNDHOUSE TO ATTEND TO REPAIRS—*Padgett v. Seaboard Air Line Railway, Supreme Court of South Carolina (Nov. 18, 1914), 83 Southeastern Reporter, page 633.*—This action was brought by Clara V. Padgett as administratrix of the estate of Lewis H. Padgett, for the death of the latter, an engineer in the employ of the company named, which occurred on the morning of January 12, 1913. Padgett had recently been promoted from freight engineer to a passenger run between Columbia, S. C., to Savannah, Ga., so that he was engaged in interstate commerce. Further facts are stated in the opinion delivered by Judge Fraser, as follows:

When the train reached Columbia, the engine was detached and carried to the yard at Cayce, a station near Columbia. The engineer ran his engine into the yard near the roundhouse, and left it upon a siding in the yard. He left his engine about 10.30 on the 11th day of January, 1913. Mr. Padgett's regular run would have required him to leave Columbia at 6.10 a. m. on the morning of the 12th. He was detained in the yard for a while so that he might take out another train, if necessary. It was not necessary, and he was notified that he would make his regular run. The company had built a small boarding house at Cayce for the convenience of its trainmen, but let out the management of the house to a private party. When Mr. Padgett was notified that he would be required to make his regular run, he went to the boarding house and found it full. He then went back on the yard, into the roundhouse, and into an engine, and went to sleep. At about 4.30 o'clock on the morning of the 12th, the engine in which Mr. Padgett was asleep was run out of the roundhouse down to the coal chute, to be supplied with coal, water, etc., for its trip. At the coal chute Mr. Padgett waked and got off the engine. He inquired where his engine was and was told it was in the roundhouse on track No. 3. The last seen of Mr. Padgett alive, he was going in the direction of the roundhouse. When it came time to call him he could not be found, and the engine went off without him. A little later he was found in an open, uncovered pit in the roundhouse dead. His engine had been standing with the step over the pit. The pit was a little over 8 feet deep. There were no lights in the roundhouse.

Suit was brought in behalf of his widow and dependent children for negligence under the Federal employers' liability act. The defendant answered, denying negligence. It denied that the deceased was engaged in interstate commerce at the time of his death. It pleaded that the deceased was a trespasser in the roundhouse, contributory negligence, and assumption of risk. The judgment was for the plaintiff, and the defendant appealed.

The court denied the contention of the company that a verdict should have been directed for it on the ground that there was no evidence that the employee came to his death while engaged in interstate commerce. It held that the evidence, though circumstantial, pointed to the conclusion that Padgett's purpose in going

to the roundhouse was not to further any end of his own, but to make sure that repairs which had been found the night before to be needed were properly and promptly made. It was also held that the question as to negligence of the company and assumption of risk on the part of the engineer had been properly submitted to the jury, and affirmed the judgment of the court below.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—FIREMAN ON SWITCH ENGINE—*Illinois Central Railroad Co. v. Behrens, Administrator, Supreme Court of the United States (Apr. 27, 1914), 34 Supreme Court Reporter, page 646.*—Joseph Behrens brought action for the death of his intestate, under the Federal employers' liability act, against the company named, in the Circuit Court for the Eastern District of Louisiana. Judgment being for the plaintiff, the company took the case to the circuit court of appeals on a writ of error, and that court certified a question of law to the Supreme Court. The decedent was a fireman and came to his death through a head-on collision. The nature of his work in general and at the time of the injury and the reasoning of the court in arriving at the conclusion that as he was not engaged in interstate commerce at that time his case was not within the provisions of the statute, are shown in the following extract from the opinion as delivered by Mr. Justice Van Devanter:

The crew handled interstate and intrastate traffic indiscriminately, frequently moving both at once and at times turning directly from one to the other. At the time of the collision the crew was moving several cars loaded with freight which was wholly intrastate, and upon completing that movement was to have gathered up and taken to other points several other cars as a step or link in their transportation to various destinations within and without the State. The question of law upon which the circuit court desires instruction is whether, upon these facts, it can be said that the intestate, at the time of his fatal injury, was employed in interstate commerce within the meaning of the employers' liability act.

The court considered briefly the status of the railroad as a highway for both interstate and intrastate commerce, the interdependence of the two classes of traffic in point of movement and safety, the practical difficulty in separating or dividing the general work of the switching crew, and the nature and extent of the power confided to Congress by the commerce clause of the Constitution, and concluded:

Here, at the time of the fatal injury the intestate was engaged in moving several cars, all loaded with intrastate freight, from one part of the city to another. That was not a service in interstate commerce, and so the injury and resulting death were not within the statute. That he was expected, upon the completion of that

task, to engage in another which would have been a part of interstate commerce, is immaterial under the statute, for by its terms the true test is the nature of the work being done at the time of the injury.

The question is accordingly answered in the negative.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—INSTALLING BLOCK-SIGNAL SYSTEM—*Saunders v. Southern Railway Co., Supreme Court of North Carolina (Nov. 25, 1914), 83 Southeastern Reporter, page 573.*—B. B. Saunders, administrator of the estate of his deceased son, Kemp Saunders, brought action against the company named under the Federal employers' liability act for the death of the latter while in the employ of said company. The employee was engaged in installing a block-signal system between two points in the State of North Carolina, in place of one already in use, along a portion of the railway used in interstate commerce. He was killed by a train while crossing the tracks to reach his work train. Referring to the decisions in a number of cases, the court held that the employee was engaged in interstate commerce, saying:

We think it clear that one engaged in installing and equipping the road with the block signals was engaged in doing something which was a part of the interstate commerce in which the defendant was engaged, to the same extent as one engaged in repairing a bridge or a track in such commerce.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—INSTALLING BLOCK-SIGNAL SYSTEM—EMPLOYEE ON WAY FROM WORK—*Grow v. Oregon Short Line Railroad Co., Supreme Court of Utah (Feb. 5, 1914), 138 Pacific Reporter, page 398.*—Action was brought by Cecilia Grow as administratrix of Cyrus L. Grow, for the death of Grow by accident, against the company named. Grow was in the employ of the company, engaged in installing a block-signal system. At the time of the injury he was riding on the track on a motor tricycle to the place where the outfit of the crew was located, and where the men boarded and lodged in cars furnished by the company. A train, late and going with great speed, approached the tricycle without signals or warning and without a headlight, the engineer not keeping a lookout nor seeing the tricycle until within a car length of it. The foreman of the block-signal system installing crew, who was with Grow on the tricycle, saw the train and jumped in time to save himself, but Grow was struck and killed.

At the completion of the evidence in the district court of Weber County, the court directed a verdict for the defendant. The plaintiff

appealed, and the judgment was reversed and the case remanded. The defendant applied for a rehearing, but this was denied. Several questions were argued, but the most important was whether the employee was engaged in interstate commerce under the provisions of the Federal employers' liability act. This question was answered in the affirmative, as is shown by the appended quotation from the opinion by Judge Straup:

Counsel for both parties have largely argued the case upon the proposition or theory of whether the case is within or without the provisions of the act of Congress relating to the liability of interstate common carriers by rail to their employees.

We think the rule announced in the Pederson case [229 U. S. 146, 33 Sup. Ct. 648, Bul. No. 152, p. 85], is decisive of the question here. If, as there announced, an employee engaged in repairing a car, engine, or track, or constructing or repairing a switch or bridge along a track used in interstate commerce, is, within the meaning of the act, employed in such commerce, then, do we think, was the deceased here also employed in such commerce.

The evidence, without dispute, shows, and the defendant, on the record, unqualifiedly admitted, that the signals were installed to carry on, and were in furtherance of, the interstate commerce in which the defendant was engaged. On the record it is clear that they were put in for no other purpose.

The further point is made that the deceased, at the time of the injury, was not engaged in any work, but was on way to his abode; hence the relation of master and servant did not then exist between him and the defendant, and for that reason he was not then "employed in such commerce." We think that also is answered against the respondent by the Pederson case. But the observations of the court in the case of Phila., B. & W. R. Co. v. Tucker, 35 App. D. C., 123, affirmed by the Supreme Court, 220 U. S. 608, 31 Sup. Ct. 725, are here pertinent: * * *

"We think the better rule, the one founded in reason and supported by authority, is that the relation of master and servant, in so far as the obligation of the master to protect his servant is concerned, commences when the servant, in pursuance of his contract with the master, is rightfully and necessarily upon the premises of the master. The servant in such a situation is not a mere trespasser nor a mere licensee. He is there because of his employment, and we see no reason why the master does not then owe him as much protection as he does the moment he enters upon the actual performance of his task."

We think the relation of master and servant between the deceased and the defendant with respect to the latter's liability for the charged negligence as clearly existed at the time of the injury as though the deceased then had been actually engaged in his work along the track.

From these considerations it follows that the case falls within the provisions of the congressional act in question.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—REPAIRING CARS—DEFECTIVE GRINDSTONE—*Opsahl v. Northern Pacific Railway Co., Supreme Court of Washington (Feb. 16, 1914), 138 Pacific Reporter, page 681.*—The plaintiff, a blacksmith in the employment of the company named, received injuries to the fingers while using a power grindstone which was in a very defective condition, its use in such condition being a violation of the State factory law. As he was repairing cars used in interstate commerce, he brought the action under the Federal employers' liability act of 1908. The defense of assumption of risk was pleaded by the defendant company, but was not allowed, and judgment was rendered in the plaintiff's favor in the superior court of Pierce County. On appeal the supreme court affirmed this judgment, holding that as the action was brought under the Federal statute, which abrogates the defense of assumed risks in any case where the common carrier violates "any statute enacted for the safety of employees," such violation contributing to the injury complained of, that statute governed in this case.¹

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—REPAIRING ENGINE—*Law v. Illinois Central Railroad Co. et al., United States Circuit Court of Appeals, Sixth Circuit (Nov. 4, 1913), 208 Federal Reporter, page 869.*—John Law was injured while employed in the repair shop of the railroad company named, and while engaged in repairing a part of an engine used in interstate commerce. He was helping a boiler maker, when on account of the latter striking a glancing blow, a nut flew and hit Law in the eye. He brought suit, making claim for damages both at common law and under the employers' liability act. Judgment was for the defendants on a directed verdict in the District Court for the Western District of Tennessee, and the plaintiff appealed. The circuit court of appeals held that no recovery could be had at common law because the injury was caused by the negligence of the boiler maker, who was a fellow servant of the plaintiff. It held, however, that the plaintiff had been engaged in interstate commerce, and that a recovery was possible under the employers' liability act; the judgment was therefore reversed and a new trial ordered. Judge Knappen, speaking for the court, discussed the question of interstate commerce, using in part the following language:

Was the plaintiff engaged in interstate commerce?

In the instant case the engine was in the shop for what is called "roundhouse overhauling." It had been dismantled at least 21 days

¹ Attention may be called in this connection to the case *Seaboard A. L. Ry. Co. v. Horton* (p. 80), in which the Supreme Court of the United States held that such a binding together of State and Federal laws was not possible.

before the accident. Up to the time it was taken to the shop it was actually in use in interstate commerce. It was destined for return thereto upon completion of repairs. It actually was so returned the day following the accident.

We have not here a case of original construction of an engine not yet become an instrumentality of interstate commerce. It had already been impressed with such use and with such character. Under the existing facts, can the length of time required for the repairs change the legal situation? If so, where is the line to be drawn? How many days temporary withdrawal would suffice to take it out of the purview of the act? And is it material whether the repairs take place in a roundhouse or in general shops? Is not the test whether the withdrawal is merely temporary in character? In *Northern Pacific Ry. Co. v. Maerkl*, 198 Fed. 1, 117 C. C. A. 237 [Bul. No. 112, p. 84], the Circuit Court of Appeals of the Ninth Circuit held that an employee engaged at the railway shops in making repairs upon a refrigerator car theretofore used in interstate commerce, and intended to be again so used when repaired, was within the protection of the employers' liability act. The repairs there in question were substantial in their nature, requiring at least a partial dismantling of the car, which had been in the shop two days when the accident occurred. The rule announced by this decision commends itself to our judgment.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—REPAIRING TELEGRAPH LINE—*Deal v. Coal & Coke Railway Co.*, *United States District Court, Northern District of West Virginia (July 2, 1914)*, 215 *Federal Reporter*, page 285.—David F. Deal was injured while employed in repairing a telegraph line belonging to the company named, and used in directing the operation of interstate trains. As the only reason for a Federal court to have jurisdiction was that the employee was under the Federal employers' liability act, the company demurred to the complaint on the ground that the employment was not included within the provisions of this act, but the court decided against this contention. Judge Dayton, in delivering the opinion, said:

The Supreme Court, in *Pederson v. Delaware, L. & W. R. Co.*, 229 U. S. 146, 33 Sup. Ct. 648 [Bul. No. 152, p. 85], has certainly held that an iron worker engaged in carrying bolts to repair a bridge upon an interstate carrier's roadbed is entitled to the benefit of the act. It says:

"That the work of keeping such instrumentalities in a proper state of repair while thus used (in interstate transportation) is so closely related to such commerce as to be in practice and in legal contemplation a part of it."

I am able to see little difference between the necessity for the proper repair of the bridge over which the interstate commerce passes and the necessity of repairing the telegraph line owned by the company and by the operation of which the movement of such commerce over the bridge is controlled and directed.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—ROUNDHOUSE EMPLOYEE—*La Casse v. New Orleans, Texas & Mexico Railroad Co., Supreme Court of Louisiana (Mar. 30, 1914), 64 Southern Reporter, page 1012.*—Evelina La Casse brought suit for the death of her husband caused by the explosion of a locomotive boiler while in the employ of the defendant railroad company. The question whether the employment came under the provisions of the employers' liability act arose in a somewhat unusual way, since in this case it was the defense which contended that it was so included. If it were, suit would have to be brought by the personal representative, and the action by the widow would fail. The court's decision, however, was that the employment was not within the scope of the act. The statement in the opinion, delivered by Judge Provosty, as to the work which the employee was doing, and the discussion of his status with respect to the liability act, are in part as follows:

His functions consisted in receiving the locomotives that came to the roundhouse, taking care of them, and having them filled with water and steamed up, ready for use, when called for.

We do not agree with defendant that this case does come under the Federal statute.

If the fact that a locomotive or a car might be used the next day, or whenever next needed, in interstate commerce, were equivalent to being actually at the time in use in that commerce, the effect would be that whenever a railroad did not confine itself to intrastate commerce, but engaged also in interstate commerce, every one of its employees would at all times be engaged in interstate commerce when at their work. Two decisions of the Supreme Court of the United States, *Pederson v. Delaware, L. & W. R. R. Co.*, 229 U. S. 146, 33 Sup. Ct. 648 [see Bul. No. 152, p. 85]; *St. L., S. F. & T. R. R. Co. v. Seale*, 229 U. S. 156, 33 Sup. Ct. 651 [see Bul. No. 152, p. 87], are relied upon by defendant's learned counsel; but these decisions, as we understand them, are very far from having that broad scope. In those cases, although the connection was but slight, there was a direct engagement in interstate commerce, whereas a locomotive or an empty car, which has completed an intrastate run and may on its next run be used in like manner interstate, can not be said to be actually engaged in interstate commerce.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—TESTING ENGINE AFTER REPAIRS—*Lloyd v. Southern Railway Co., Supreme Court of North Carolina (May 26, 1914), 81 Southeastern Reporter, page 1003.*—W. L. Lloyd brought action under the Federal employers' liability act against the company named for personal injuries resulting from a defective ash-pan mechanism on an engine which had just come from the repair shop, and which he was to take as engineer on a regular interstate run after a trial trip to ascertain whether it was in proper order. The

court affirmed a judgment of the superior court of Guilford County in favor of the plaintiff, deciding that the employment was in interstate commerce, and in its opinion by Judge Walker, said as to this point:

He was put in charge of this engine, and his duty, as engineer, required him to inspect it for the purpose of ascertaining whether it was in proper condition for its run from Spencer, N. C., to Monroe, Va. It was in commission for the purpose of moving interstate traffic between these two points. It was not necessary to constitute it an instrument of interstate commerce that it should have started on its journey. This engine was to be employed wholly in interstate commerce, and has been so used since the day of the injury. The work of reparation had been finished in the shops, and the engine was run out on the track, preparatory to her next interstate run. She had been thus used before, and her runs were merely suspended temporarily for the purpose of repairing her, after which the interstate runs would be resumed. Plaintiff was overlooking his engine, expecting to take it out that day or the next to Monroe, Va. His work was done only in a preparatory stage of interstate commerce, but was a part of it.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—TRANSPORTATION OF LUMBER BY PRIVATE RAILROAD—*Bay v. Merrill & Ring Lumber Co., United States District Court, Western District of Washington (Feb. 20, 1914), 211 Federal Reporter, page 717.*—August Bay was injured while employed by the company named, and brought suit. At the trial a nonsuit was granted, and the plaintiff moved for a new trial, which was denied. The company was engaged in logging operations, and had a logging railroad of standard gauge connecting with the Great Northern Railway. The products were carried to Puget Sound in Washington, in which State the logs were cut, and there sold to various mills, which sawed them into lumber, about 80 per cent of which went into other States and countries. The company's charter gave it the power to act as a common carrier, but it had never carried or offered to carry anything but its own products. Accordingly the court held that it was not engaged in interstate commerce, and that the plaintiff was not within the provisions of the Federal employers' liability act.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—INTERSTATE COMMERCE—WEIGHING EMPTY CARS—*Wheeling Terminal Co. v. Russell, United States Circuit Court of Appeals, Fourth Circuit (Dec. 8, 1913), 209 Federal Reporter, page 795.*—Russell, the original plaintiff in this case, had recovered a judgment in the District Court of the United States for the District of West Virginia, where-

upon the defendant appealed. The employee when injured was at work as one of a crew engaged in weighing empty cars which had been used in interstate transportation and weighed while full, the object being to ascertain the net weight of contents. The judgment was affirmed on appeal, the court determining among other points that Russell was engaged in interstate commerce at the time of the injury. The following is an extract from the opinion, delivered by Judge Rose, with regard to this point:

The cars were being weighed to determine the net weight of the interstate load carried by them to the West Virginia consignee. Those who were engaged in ascertaining such weights were themselves employed in that commerce. *St. Louis & San Francisco Ry. Co. v. Seale*, 229 U. S. 156, 33 Sup. Ct. 651 [Bul. No. 152, p. 87]. The cars had been employed in interstate commerce. It was not shown that they had been withdrawn from its service. The reasonable presumption, therefore, is that they remained in it. In practice such presumption will not work injustice. The defendant carrier will usually have little difficulty in showing, when it wishes to do so, where the cars were to be taken and for what purpose. For the plaintiff to trace them may be difficult and expensive.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—*Cincinnati, New Orleans & Texas Pacific Railway Co. v. Swann's Administratrix*, *Court of Appeals of Kentucky* (Oct. 22, 1914), 169 *Southwestern Reporter*, page 886.—M. B. Swann, an employee of the company named, was killed by a train, and his administratrix brought action for damages. In the first suit, brought under the State law, the court of appeals reversed a judgment of the trial court against the railroad company, with instructions to direct a verdict in its favor, on the ground of contributory negligence. As this defense would only reduce the damages under the Federal employers' liability act, the former suit was dismissed, and the present one brought under the act mentioned. A judgment was again entered in favor of the plaintiff in the trial court, the circuit court of Boyle County.

There was no dispute as to the employee being engaged in interstate commerce. He was acting as foreman of a crew engaged in putting in water columns near the tracks at Williamstown Station. While standing on the end of the ties looking into a pit excavated for a water column, he was struck by the engine of an express train running 30 or 40 miles an hour and killed. He was not seen by the engineer until too late to take any steps to save him, on account of a sharp curve which the train had just rounded.

The court held that the employers' liability act requires a showing of negligence on the part of the railroad company in order that

recovery may be had for injury or death of any employee, and that this negligence must consist of failure to discharge some duty owed to the employee; and that, unless the negligence charged involves defects in cars, equipment, etc., the State law must be looked to in determining whether the acts or omissions complained of amount to negligence.

It appeared that it was the duty of Swann to know, and he did know, the schedule time of the train in question, which on this occasion was only two minutes late; also that it was not necessary for him to occupy the place of danger in which he stood.

It was held that the employees in charge of the train owed no duty to him to slow down or give him warning of its approach, and that the fact that there were rules requiring slower speed and warnings in approaching such places as the one where the injury occurred did not entitle him to rely on the observation of those rules, as they were not enacted for the benefit of the class of employees to which he belonged.

The judgment of the trial court was therefore again reversed and a new trial granted, with directions, if the facts should prove substantially the same as on the previous trial, to direct a verdict for the defendant company.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—NEGLIGENCE—COURSE OF EMPLOYMENT—*Reeve v. Northern Pacific Railway Co.*, Supreme Court of Washington (Nov. 16, 1914), 144 Pacific Reporter, page 63.—Mike Reeve was a laborer for the company named, whose duty it was to assist in supplying the company's baggage, mail, and other cars with water and fuel, and to aid otherwise in fitting them for service. On the evening of June 23, 1911, while sitting on the floor in the door of a baggage car with his feet outside, he was pushed out by one of two other employees who were wrestling inside the car, and sustained severe injuries. The Federal employers' liability act provides that any common carrier by railroad engaged in interstate commerce shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, resulting in whole or in part from negligence of any of its officers, agents, or employees. The court held that the word "negligence" was limited to negligence of officers, agents, or coemployees while in the performance of the duties of their employment, and hence the company was not liable under the circumstances of this case.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—REFERENCE TO STATUTE—COMPARATIVE NEGLIGENCE—*Grand Trunk Western Ry. Co. v. Lindsay*, United States Supreme Court (Apr. 6, 1914), 34 Supreme Court Reporter, page 581.—George Lindsay

brought suit against the railway company named, in the United States Circuit Court for the Northern District of Illinois, to recover damages for a personal injury sustained while he was employed by the company, alleging that the injury was caused by its negligence in failing to comply with the provisions of the Federal safety appliance act. Judgment was given in his favor, which judgment was affirmed by the United States Circuit Court of Appeals for the Seventh Circuit. The case then went to the United States Supreme Court, where the judgment of the lower court was again affirmed. The points of interest and the conclusion of the court are indicated below in the language of Mr. Chief Justice White, who spoke for the court:

In the trial court it is insisted the operation and effect of the employers' liability act upon the rights of the parties was not involved because that act was not in express terms referred to in the pleadings or pressed at the trial. But the want of foundation for this contention becomes apparent when it is considered that in the complaint it was expressly alleged and in the proof it was clearly established that the injury complained of was suffered in the course of the operation of interstate commerce, thus bringing the case within the employers' liability act. Aside from its manifest unsoundness, considered as an original proposition, the contention is not open, as it was expressly foreclosed in *Seaboard Air Line R. Co. v. Duvall*, 225 U. S. 477, 482, 32 Sup. Ct. Rep. 790.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—RELIEF ASSOCIATIONS—RELEASE—*Wagner v. Chicago & Alton Railroad Co., Supreme Court of Illinois (Dec. 2, 1914), 106 Northwestern Reporter, page 809.*—Joseph M. Wagner recovered a judgment amounting to \$15,000 against the company named in the superior court of Cook County, for personal injuries. This was affirmed by the appellate court, which, however, required a remittitur of \$387.09, the portion contributed by the Chicago, Burlington & Quincy Railroad Co., Wagner's employer, to the benefits he had received from the relief fund. The Alton company then brought a writ of certiorari to the supreme court, and is therefore designated as the plaintiff in error in the opinion.

The employee, conductor in charge of a switching crew, was knocked from a position on a car step by a semaphore post alleged to be too near the track of the Alton company, over which trains of the Burlington company were operated under a license. It was held that if the post was in fact located too near the track, such location constituted negligence on the part of both railroad companies, and that the fact was properly for the determination of the jury, which had found in favor of the employee. The remaining question related to the release of the company by acceptance of benefits from the relief fund, and involved

the application of the Federal and State laws to the case, especially in view of an agreement at the trial that the question of interstate commerce was eliminated, the company sued not being the employing company. Two of the judges presented a dissenting opinion on this point. Judge Cooke, who delivered the opinion of the majority of the court, affirming the judgment below, discussed the question mentioned as follows:

Defendant in error had no cause of action against plaintiff in error under the Federal employers' liability act, as that act applies only where the relation of master and servant exists. To meet the case of defendant in error, the plaintiff in error proved that he was, and had been since 1902, a member of the relief department of the Burlington company; that the employees of that company made monthly contributions to the relief fund; that the company maintained the department and bore the operating expenses; that he had accepted from the relief fund, as benefits, the sum of \$1,231; and that \$1,349.59 had been paid in his behalf for hospital bills, physicians' services, and the like. In rebuttal defendant in error was permitted to prove that at the time he was injured the engine and cars were engaged in interstate commerce. The admission of this evidence in rebuttal is assigned as error.

There can be but one satisfaction for an injury, and, if defendant in error made a settlement with the Burlington company and released it from further liability, it was a release, also, of plaintiff in error from all liability, as the Burlington company was a joint tort-feasor. The contract of defendant in error with the relief department provided that the voluntary acceptance by him of benefits after receiving an injury should operate as a satisfaction of further claims against the employer on account of such injury, and it is the law of this State that such an acceptance, with the knowledge that the contract contained such a provision, operates as a satisfaction and bar to a subsequent suit for damages. *Eckman v. Chicago, Burlington & Quincy Railroad Co.*, 169 Ill. 312, 48 N. E. 496 [Bul. No. 15, p. 245]. The State law in this regard has been modified, however, by the Federal employers' liability act as to cases where injuries are received by certain employees of an employer engaged in interstate commerce. The Federal act provides that any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the act, shall to that extent be void, provided that in any action brought against any such common carrier under the act such common carrier may set off any sum it has contributed or paid to any insurance, relief, benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto, on account of the injury or death for which the action is brought.

When plaintiff in error attempted to prove a satisfaction by the payment of benefits by its joint tort-feasor, the Burlington company, to defendant in error, it was proper for defendant in error, in rebuttal, to show that no valid release had been given the Burlington company by him. As between defendant in error and the Burlington company the Federal employers' liability act clearly applied, and if, as the United States Supreme Court has repeatedly held, that law super-

sedes all State laws on the subject, then the release given by defendant in error to the Burlington company was not valid and would not have precluded recovery by him from that company. If it was not valid so far as the Burlington company was concerned, it was clearly invalid as to plaintiff in error and constituted no defense to this action.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—SAFETY APPLIANCES—*Pennell v. Philadelphia & Reading Railway Co., United States Supreme Court (Jan. 5, 1914), 34 Supreme Court Reporter, page 220.*—The plaintiff, as administratrix of the estate of J. A. Pennell, deceased, brought an action for damages for death by wrongful act in the District Court of the United States, for the Eastern District of Pennsylvania. Pennell was employed by the defendant company in the capacity of fireman on one of its locomotives, and, it was alleged, came to his death by the failure of defendant to comply with the requirements of the safety appliance acts of Congress and the rules and directions of the Interstate Commerce Commission in that defendant failed to affix between the locomotive and its tender an automatic coupling device. The action was prosecuted under the act of Congress relating to the liability of common carriers by railroad engaged in interstate commerce to their employees while so engaged. The trial court directed the jury to render a verdict for the defendant, upon which judgment was entered, and it was affirmed by the circuit court of appeals. (122 C. C. A. 77, 203 Fed. 681.) The case was then brought to the United States Supreme Court on error, where the judgment of the lower court was affirmed, the court holding that the safety appliance law is entirely satisfied by providing the automatic coupler between the tender and the cars constituting the train—that is, on the rear end of the tender—and not necessarily between the engine and the tender.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—FEDERAL STATUTE—SAFETY APPLIANCES—HAULING BAD-ORDER CAR—STATUS OF WORKMAN RIDING HOME—*Dodge v. Chicago Great Western Railroad Co., Supreme Court of Iowa (Mar. 24, 1914), 146 Northwestern Reporter, page 14.*—This action was brought for the death of a conductor in the employ of the company named, from an accident which occurred November 22, 1911. A verdict was directed for the defendant, and the plaintiff appealed. The interstate train of which he was conductor picked up a car which had a defective coupling and hauled it on the rear of the train, the bad coupling being, however, on the rear end. This car had been fastened to another car by a chain, and as a convenient way of carrying the chain along it was attached to the brake rod with a wire, the decedent Dodge taking part in doing

this. After arriving at Des Moines at the completion of the trip, Dodge got upon an engine of a freight train going out over the track on which he had just come in, in order to ride to his home. This engine was derailed, and the engine in leaving the track turned, crushing him to death between the engine proper and the tender. A piece of chain, which was probably part of the one in question, was found, and it was claimed that this was the cause of the derailment. Counts of the declaration were based upon both the Federal employers' liability act and the safety appliance act. The court in affirming the judgment for the defendant decided that Dodge was not at the time of the accident engaged in interstate commerce; that the condition of the car had nothing to do with the accident or injury; and that Dodge was not at the time either an employee or a passenger, but a licensee, to whom the company owed only the duty of ordinary care. The following quotation is from the opinion by Judge Withrow:

The accident did not result from any causal connection with the defective condition of the car, but from a cause which was unrelated to it, excepting that the chain had previously been used to couple that car to another one, but which at the time of the movement of the car was not so used. Under these facts, which are not in dispute, we think the provisions of the safety appliance act are without application.

As to the status of the decedent at the time of the accident Judge Withrow said in part:

We conclude that the decedent, at the time of the accident which resulted in his death, was neither an employee nor a passenger, as such terms are used in fixing liability. Assuming that he, with others, had by permission enjoyed the privilege of riding upon the engine towards his home, after his own service had ended, he was but a licensee. Being such, and giving to the evidence all the weight and force that can be properly claimed for it, the standard of duty towards him for his protection would be that the defendant, thus permitting the decedent to ride, would be held only to the exercise of ordinary care, and that the licensee exercises the privilege at his own risk of obvious or patent dangers, and under such conditions the defendant owed him no active duty excepting upon the discovery of his danger.

EMPLOYERS' LIABILITY — RAILROAD COMPANIES — INJURIES TO EMPLOYEE'S FAMILY RIDING ON PASS — *Charleston & W. C. Ry. Co. v. Thompson*, Court of Appeals of Georgia (Aug. 30, 1913), 80 *South-eastern Reporter*, page 1097. — A judgment was obtained against the railway company, by Lizzie Thompson, for injuries sustained by her through the negligence of the company, while riding on one of its trains on a pass issued to her as the wife of a railway laborer. This judgment was affirmed by the Court of Appeals of Georgia.

The following language from the syllabus by the court gives the conclusions reached:

As a general rule, a stipulation in a free pass given by a carrier, to the effect that the person who accepts it assumes all risks of injury in transportation is enforceable; and as to a passenger who has accepted transportation under such a pass a carrier is liable only for injuries resulting from wantonness or willful negligence; but an exception to this rule is presented in the provision of the "Hepburn Act" (Act June 29, 1906, ch. 3591, 34 Stat. 584 [U. S. Comp. Stat. Supp. 1911, p. 1286]), which permits a railroad company to issue free transportation to its employees and members of their families. As between such employees and the railroad company which employs them, the privilege and benefit of being afforded transportation without cost may be regarded as a part of the consideration paid for the services of the employee and may be treated as an element of value within the contemplation of both parties at the time of entering into the contract of employment. Consequently the court did not err in refusing to charge the jury that, if the plaintiff (the wife of an employee) was traveling on a free pass, she would not be entitled to recover.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—OPERATING RAILROAD—*Sartain v. Jefferson City Transit Co., Kansas City Court of Appeals (Nov. 2, 1914), 170 Southwestern Reporter, page 411.*—Henry W. Sartain sued the railroad company named for damages for personal injuries. Judgment was in the plaintiff's favor in the circuit court of Cole County, and the defendant appealed. The decision involved the construction of the Missouri statute, Revised Statutes of 1909, section 5434, under which the action was brought, and which provides that railroad companies shall be liable for damages sustained by any agent or servant thereof while engaged in the work of operating such railroad by reason of the negligence of any other agent or servant thereof. The work which the plaintiff was doing at the time of the injury consisted of unloading ties from a wagon onto the roadbed of an extension of the railroad line, which extension was in process of construction. The company contended that he was not engaged in operating a railroad, but the court, after citing and discussing the cases in point, held that the law of the State is that such employees—those who, though not employed in actually moving a train, are doing work which is directly essential to enable the trains to move—are within the statute. As negligence on the part of a fellow employee in dropping a tie and mashing the plaintiff's foot was alleged, and the jury by its favorable verdict had found this to be the fact, the court affirmed the judgment below.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—ORDERS OF SUPERIOR—INJURY TO BRAKEMAN—*Ainsley v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co., Supreme Court of Pennsylvania (Jan. 5, 1914), 90 Atlantic Reporter, page 129.*—The employee Ainsley secured judgment in the court of common pleas of Allegheny County for personal injuries, which judgment was affirmed on appeal.

At the time the plaintiff below was injured he was in the employ of the defendant company as a brakeman on a passenger train. He was on duty on a train which left the city of Pittsburgh between 2 and 3 o'clock on the morning of October 31, 1909, bound for Columbus, Ohio. Shortly after it had started it was discovered that the air brake on one of the cars was not working properly, and the plaintiff got on the lower step of a Pullman car in an effort to locate the brake which needed attention. While leaning out from that step while the train was still in motion, he was brushed from the car by coming in contact with a fence which the defendant company had constructed between its passenger tracks to prevent persons from crossing over them at grade. He was severely injured, and, from the judgment which he recovered in the court below, the defendant company appealed.

It was held that the evidence justified findings by the jury that the brakeman's act was in obedience to peremptory orders by the conductor, and that the latter was a person to whose orders the brakeman was "bound to conform" under the State statute; also that the question of assumed risks had been properly submitted to the jury, and on their finding that the apparent hazard was not so excessive as to make obedience to the orders an act of negligence, the liability of the company was sustained.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—ORDERS OF SUPERIOR—YARD AND BRIDGE MEN—*Chicago & Erie Railroad Co. v. Lain, Supreme Court of Indiana (Jan. 13, 1914), 103 Northeastern Reporter, page 847.*—Henry Leroy Lain sued the company named for damages for personal injury and secured a favorable verdict in the circuit court of Fulton County. This was set aside for defect in the complaint, and this being amended, a verdict for the plaintiff was again rendered on the second trial, from which the company again appealed, the supreme court on this occasion sustaining the judgment of the court below. The suit was brought under Burns' A. S. 1908, section 8017, which provides that every railroad corporation in the State shall be liable for damages for personal injury suffered by any employee while in its service; the employee so injured being in the exercise of due care and diligence, "where such injury resulted from the negligence of any person in the service of such corporation, to whose order or direction the injured employee at the time of his injury was bound to conform, and did conform."

Lain was directed by a foreman to move a car which was standing on a switch track, and in order to carry out this order placed himself upon the track behind the car, with his back to other cars standing on the same track. While in this position, under further orders of the foreman, an engine and cars ran at high speed against the cars standing on the track behind Lain, and he was crushed and sustained serious injuries.

Among other contentions of the company, it was claimed that the employee was guilty of contributory negligence; and that on account of the nature of his employment he was not covered by the statute. With regard to these matters, Judge Cox, who delivered the opinion of the court, said in part:

Under the allegations of the complaint, the position taken by appellee was not of itself dangerous and could only become so by the violation of duty on the part of the foreman, and he was not bound, in the exercise of due care, to anticipate that the foreman who was, under the averments of the complaint, present and acting for the master would violate the duty to exercise ordinary care to prevent his position from becoming a dangerous one. [Cases cited.]

Finally it is claimed by counsel that the complaint affirmatively shows that appellee was a carpenter and not an employee engaged in the operation of trains, and that for that reason he can not come within the provisions of the statute which is invoked to establish his cause of action. It is not averred in the complaint that appellee was employed and working as a carpenter, but, on the contrary, it is averred that he was one of the appellant's "yard and bridge men"; that as such he was ordered to move a car on one of the tracks of appellant's switch yard; and that, while doing this, he was injured by the movement of other cars and an engine in the yard and on that track. This obviously brings appellee within the application of the statute within the rule laid down in *Indianapolis, etc., Co. v. Kinney* (1908) 171 Ind. 612, on page 617, 85 N. E. 954, on page 957, where it was said: "We do not mean that it is essential to the bringing of an employee within the statute that he should be connected in some way with the movement of trains, but it seems sufficient if the performance of his duties brings him into a situation where he is, without fault, exposed to the dangers and perils flowing from such operation and movement, and is by reason thereof injured by the negligence of a fellow servant described in the act."

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—SAFETY APPLIANCES—ELECTRIC TRAINS—*Spokane & Inland Empire Railroad Co. v. Campbell, United States Circuit Court of Appeals, Ninth Circuit (Oct. 19, 1914), 217 Federal Reporter, page 518.*—Edgar E. Campbell brought action against the company named for personal injuries suffered while running as motorman an interstate electric train of the company

That the provisions of the safety appliance act as amended now apply to interstate electric trains was held by the court, Judge Wolverton, who delivered the opinion, speaking in part as follows on this point:

There can be no doubt that when the primary act was passed, electrically propelled trains were not within the legislative mind, and where "locomotive engine" occurs reference was had to a steam-propelled engine. And likewise when "engineer" is spoken of, it had relation to a person in charge of a steam-propelled locomotive.

The electric railroad has since come into very general use, with its driving engines called motors, and its employees in charge of the engines are called motormen or enginemen.

In a narrower sense, a locomotive engine is spoken of as an engine propelled by steam; but when the statute, as the amendment does, extends the provisions of the act to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and to all other locomotives, tenders, cars, and similar vehicles, it broadens the significance so as, without question, to include motors electrically propelled, used upon railroads engaged in interstate commerce. So, also, the original act, with its amendment, includes the operators of such engines, whether called engineers or motormen. We think the statute is broad enough to require that electrically propelled engines and trains engaged in interstate commerce, as well as steam-propelled engines and trains, shall be equipped with air brakes for their efficient operation and control.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—STATE STATUTE—EXTRATERRITORIAL EFFECT—JURISDICTION OF COURTS—*Tennessee Coal, Iron & R. Co. v. George, United States Supreme Court (Apr. 13, 1914), 34 Supreme Court Reporter, page 587.*—Wiley George was injured while employed by the defendant company in Alabama, the injury being due to a defect in the locomotive on which he was employed. He brought suit for damages in the city court of Atlanta, Ga., basing his right to recover on section 3910 of the Alabama Code which makes the master liable when an injury is caused by the defective condition of machinery, etc. The company defended upon the ground that the courts of Georgia did not have jurisdiction, as section 6115 of the Alabama Code provided that "all actions under section 3910 must be brought in a court of competent jurisdiction within the State of Alabama, and not elsewhere." The company contended that inasmuch as the law provided that action under it should be brought in the Alabama courts only, it would be a denial of full faith and credit to the acts of Alabama, by the State of Georgia, contrary to the provisions of article 4, section 1 of the Constitution of the United States, if the Georgia court took jurisdiction. The contention of the company was overruled and George obtained judgment in his favor, which judgment was affirmed by the Georgia Court

of Appeals. (11 Ga. App. 221, 75 S. E. 567.) In the United States Supreme Court the judgment of the State court was affirmed, Mr. Justice Lamar delivering the opinion of the court, from which the following is taken:

There are many cases where right and remedy are so united that the right can not be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that "where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." [Cases cited.]

But that rule has no application to a case arising under the Alabama Code relating to suits for injuries caused by defective machinery. For, whether the statute be treated as prohibiting certain defenses, as removing common-law restrictions, or as imposing upon the master a new and larger liability, it is in either event evident that the place of bringing the suit is not part of the cause of action—the right and the remedy are not so inseparably united as to make the right dependent upon its being enforced in a particular tribunal. The cause of action is transitory, and like any other transitory action can be enforced "in any court of competent jurisdiction within the State of Alabama."

The courts of the sister State, trying the case, would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action, or which name conditions on which the right to sue depend. But venue is no part of the right, and a State can not create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction.

EMPLOYERS' LIABILITY—REGULATIONS CONCERNING ELECTRIC WIRES—SUBSTITUTE PROVISIONS—*McClagherty v. Rogue River Electric Co.*, Supreme Court of Oregon (Apr. 7, 1914), 140 *Pacific Reporter*, page 64.—James McClagherty, a minor a little less than 21 years of age, met his death May 27, 1911, from an electric shock while installing an electric motor, for this purpose running wires on a certain pole, which carried among others some 2,300-volt wires. He was not instructed whether or not to cut off the current from these wires while doing the work, and did not do so. The company had provided means of interrupting the current, instead of conforming to the statutory regulations as to electric wires included in the employers' liability act, Laws of 1911, page 16. As to the necessity of strict compliance by employers with those regulations, the court, in its opinion delivered by Judge Bean, said:

The contention of the defendant assumes that under the employers' liability act the company was at liberty to furnish substitutes for those things required by the terms of the act; that is, instead of "full and complete insulation" being provided at all points where employees are liable to come in contact with the wires carrying electricity of a

dangerous voltage, instead of dead wires not being mingled with live wires, nor strung upon the same support, and the arms or supports bearing live wires being "especially designated by a color or other designation which is instantly apparent," and instead of such live wires being strung far enough from the poles or supports to permit the repairmen to engage in their work without danger of shock, all as required by the act, the defendant could furnish cut-off switches so that the current of electricity could be shut off, and then the company would not be negligent, notwithstanding the fact that the provisions of the statute were not complied with. Such, however, is not the law. The requirements of the statute as to the safeguards enumerated are positive and mandatory. There are no alternatives.

The judgment of the court below in the plaintiff's favor was therefore affirmed.

EMPLOYERS' LIABILITY—RIGHT OF ACTION—ELECTION—EFFECT OF WORKMEN'S COMPENSATION ACT—*Consolidated Arizona Smelting Co. v. Ujack*, Supreme Court of Arizona (Mar. 17, 1914), 139 *Pacific Reporter*, page 465.—The employee Ujack was injured, and brought action against the company employing him. Judgment was for plaintiff in the superior court of Yavapai County, and the supreme court affirmed this judgment. The defense relied upon was that the plaintiff's only remedy was a proceeding under the workmen's compensation act, since he did not previous to the injury elect to reject the provisions of that act. The court decided that an employee has the option to elect any one of three forms of procedure after the injury, and that the adoption of one becomes exclusive only on commencing a suit in accordance with his election. Quotations are made in the opinion from various sections of the constitution and the workmen's compensation act. Among other things, speaking by Judge Ross, the court says:

The appellee [Ujack] contends that he was entitled, under the facts of the case, to maintain his suit for personal injury under the employers' liability law, while the appellant insists that his exclusive remedy was to be found in the compulsory compensation law. The controverted question may be disposed of by a correct answer to this question: Does the compulsory compensation act, when not disaffirmed prior to injury, limit the remedy of the injured employee to the compensation provided in that act, or may he after the injury elect between his remedy under the act and the other remedies of the common-law liability or employers' liability? The appellee was in the employment of appellant at the time the workmen's compensation law took effect, and had been in such employment for more than 10 days thereafter when he was injured. Neither the employer nor the employee had taken any affirmative action in recognition of the law, either to approve or repudiate it.

The constitution says: "The legislature shall enact a workmen's compulsory compensation law * * * by which compulsory compensation shall be required to be paid to any such workman by his

employer. * * * Provided, that it shall be optional with said employee to settle for such compensation, or retain the right to sue said employer as provided by this constitution." This mandate to the legislature was carried out in the enacting of the workmen's compulsory compensation law, and, in doing so, there was created a new civil action heretofore unknown to our laws, available to the employee injured in the circumstances provided by law. It is optional with the injured employee as to whether he will accept the compensation. The employee's right to exercise this option being a constitutional right, legislation is impotent to deprive him of it. If the employee is never injured, he can make no claim for "such compensation," nor exercise his option. After the cause of action has accrued to the employee, he may choose to accept the compensation allowed under this act, and the legislature is competent to prescribe the steps he shall take in its enforcement, but it can not require him to elect, in advance of any injury, or the accrual of any right, which remedy he will pursue for redress.

Therefore any expressions in the workmen's compulsory compensation act that seemingly require that the employee shall elect, in advance of injury, his remedy for redress should be read and construed in view of the constitutional provision permitting him to exercise his option, after the injury, either to claim compensation or sue for damages.

The last sentence of section 14 reads: "Any suit brought by the workman for a recovery shall be held as an election to pursue such remedy exclusively." This seems to us a plain declaration by the legislature that the employee is at liberty to pursue any of the remedies provided by law until he adopts one by instituting a suit for redress, when the one adopted becomes exclusive.

EMPLOYERS' LIABILITY—SAFE PLACE—*Rosholt v. Worden-Allen Co., Supreme Court of Wisconsin (Dec. 9, 1913), 144 Northwestern Reporter, page 650.*—John Rosholt was injured by falling from a runway on a building the roof of which, as a carpenter, he was engaged in constructing. While carrying planks from a pile to the place where they were to be nailed on the roof, he stepped on the end of a loose plank composing the runway and fell through to the basement of the building, a distance of about 30 feet. The principal contention of the defendant in appealing from a judgment rendered for the plaintiff in the circuit court of Milwaukee County was that there was no negligence on its part. On this point the court, speaking by Judge Barnes, said:

Section 2394-48 requires every employer, among other things, to furnish a place of employment "which shall be safe for employees." Section 2394-49 provides that no employer "shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe." Section 2394-41, subdivision 11, provides that "the terms 'safe' and 'safety' as applied to an employment or a place of employment shall mean such freedom from danger to the life, health or safety of employees * * * as the nature of the employment will reasonably permit."

It is obvious that these provisions make some radical changes in the common law as it existed when the act was passed. * * * It is also apparent that the employer no longer fulfills his duty by furnishing a "reasonably" safe place. Instead, he must furnish one which is as free from danger as "the nature of the employment will reasonably permit."

We think it must be said in the instant case that the jury might well find that the place of employment was not as free from danger as the nature of the employment would reasonably permit. The laying of two or three tiers of planks instead of one would in all probability have prevented the accident. It is almost a certainty that the nailing down of the tier that was laid would have prevented it. So would the erection of a substantial guardrail immediately outside of the joists or purlines on which the planks rested. It may well be that there were other things which might have been done to make the place safe which the nature of the work would reasonably permit, but the enumeration given is sufficient. A jury would be well within its rights in saying that the nature of the work would reasonably permit either of the first two things mentioned to be done, and probably the third. The jury has found that the place was not "safe" within the meaning of the statutory definition of the word, and we think the evidence was ample to warrant such a finding.

As to the questions of assumption of risk and contributory negligence, the court said:

The defense of assumption of hazard was abolished by subdivision 1 of section 2394-1 as to all employees. Were it still a defense, it might and probably would defeat recovery on the part of the plaintiff. But leaving out of consideration assumption of hazard, we think there is little evidence in the record which would warrant the jury in finding that the plaintiff was guilty of contributory negligence. Certainly the jury might find on the evidence, as it did, that there was no contributory negligence on his part.

EMPLOYERS' LIABILITY—SAFE PLACE—SCAFFOLDING—*Bornhoff v. Fischer et al.*, *Court of Appeals of New York* (Feb. 3, 1914), 104 *Northeastern Reporter*, page 130.—This case was appealed from the decision of the appellate division of the supreme court, which had reversed a judgment in the plaintiff's favor in the trial court. The court of appeals affirmed the judgment of the trial court, reversing the appellate division. The facts and the legal point involved are included in the court's opinion, delivered by Judge Miller:

This plaintiff, an employee of the defendant Fischer, was injured by the fall of a scaffold or runway, and the important question now to be decided is whether section 18 of the labor law (Consol. Laws, ch. 31) makes said defendant responsible for the accident, although the scaffold or runway was actually constructed by the defendant Kennedy. Both defendants were engaged in the construction of a building. Kennedy was the general contractor, and was doing the mason

work. Fischer was a subcontractor, doing the iron work. At the time of the accident employees of both were working on a structure 12 feet high, called a penthouse, on the roof of the building. The plaintiff was sent from the roof of the penthouse by his foreman to fetch a tool, and on his return the planks leading to the penthouse slipped off and fell with him.

It is now settled law that the said statute is to be liberally construed to accomplish its beneficent purpose, that is, the better protection of workmen engaged in certain dangerous employments, and that the duty imposed upon the employer to furnish safe scaffolding, etc., can not be delegated. Scaffolding is thus made by statute a place to work which it is the duty of the employer to furnish. He can no more delegate that duty to some other contractor engaged in the work than to an independent contractor of his own, or one of his own employees, and it can be of no consequence whether he directly employs, or tacitly suffers, another to perform that duty for him.

In this case some means of access to the roof of the penthouse was necessary. The appellant furnished none whatever. His employees were thus left to choose between the runway or the less convenient ladder, both furnished by another. Having furnished none of his own, he must be held to have adopted the means at hand, or the statute loses its efficacy.

EMPLOYERS' LIABILITY—STATUTORY NOTICE—*Meniz v. Quissett Mills*, Supreme Judicial Court of Massachusetts (Feb. 25, 1914), 104 *Northeastern Reporter*, page 286.—This was an action under the employers' liability act, Stat. 1902, ch. 106, sec. 71 et seq., and the only question raised was as to the sufficiency of a notice given, under the requirements of Stat. 1909, ch. 514, sec. 132. The attorneys retained by the plaintiff to assist him wrote a letter to the defendant, within the time limit, stating that they had been so retained, mentioning the circumstances, time, and place of the injury. This was held by the court to be a sufficient notice, although it did not state in terms that it was intended to be such notice, nor that it was signed on behalf of the injured employee.

EMPLOYERS' LIABILITY—STATUTORY NOTICE—*Rodzborski v. American Sugar Refining Co.*, Court of Appeals of New York (Feb. 24, 1914), 104 *Northeastern Reporter*, page 616.—John Rodzborski was injured February 5, 1907, as his complaint alleged, by the starting of a conveyor, used to convey coal on a large belt, while the employee was removing snow from the belt. The employee was unable to speak or write English. The trial court rendered judgment in his favor, and the appellate division of the supreme court affirmed this judgment. The court of appeals decided that the plaintiff's evidence, though meager and in conflict with that of the defense, was sufficient to sustain the verdict of the jury. The judgment was reversed and a new

trial ordered, however, on other grounds, the principal point of interest being as to the notice required under the employers' liability act (Consol. Laws, ch. 31, sec. 201). This section provides:

No action for recovery of compensation for injury or death under this article [employers' liability] shall be maintained unless notice of the time, place and cause of the injury is given to the employer. * * * The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, * * *.

One Laboda sent to the company a letter, of which no copy was retained, but which he testified read as follows:

To the American Sugar Refining Co., Brooklyn. Gentlemen: Kindly investigate the case of John Rodzorski that has been injured on the 5th day of February, 1907, while cleaning a belt in the boiler room, between South Third and South Fourth Streets; John Rodzorski has been made a cripple and not able to do any work, and won't be for some time to come.

As to the sufficiency of this notice with respect to the cause of injury Judge Werner, in delivering the opinion of the court, said:

It will be seen that the form of the paper which is here claimed to be a notice in compliance with the above-quoted section resembles a letter asking for charitable aid more than it does a notice; but, if we make a due allowance for the ignorance of the plaintiff and assume that the service of this paper was intended to be a compliance with the statute, it is impossible to say that it states any "cause" of the injury. It refers to an injury sustained "while cleaning a belt." No defect in the belt or machinery is claimed, and the defendant might have searched in vain for the cause of the injury. This lack of detail in the notice is not a mere inaccuracy in stating the cause, but an utter absence of the statement of any cause whatever.

The record was not clear as to whether or not there was any signature on the letter which was claimed to be a notice. The court said in part on this point:

We simply say that the language of the statute seems to be plain and unequivocal. It must be "signed by the person injured or by some one in his behalf." That direction is at once so plain and so thoroughly within the understanding of the average layman that it would be doing violence to the intent of the legislature to say that a notice with no signature has been "signed by the person injured or by some one in his behalf." Such a notice may therefore be signed by a plaintiff himself, or by his mark when he is illiterate, or by some one on his behalf, but it must be signed.

EMPLOYMENT OF CHILDREN IN MINES—AGE LIMIT—CONSTRUCTION OF STATUTE—"ANY MINE"—*Cole v. Sloss-Sheffield Steel & Iron Co.*, Supreme Court of Alabama (May 14, 1914), 65 Southern Reporter, page 85590°—Bull. 169—15—8

177.—Willie Cole, a minor under the age of 14 years, employed by the company named, was killed in its ore mine near Bessemer, Ala., June 17, 1911. This action was brought by his administrator, and the complaint alleged that the death was proximately caused by the defendant's violation of Code 1907, section 1034. The original act of 1896-97 prohibited employment of boys under 12 years of age in the mines of the State, and its title showed that it applied to coal mines only. In the revision 12 was changed to 14, and "the mines" to "any mine." The supreme court held that this change manifested a legislative intent to make the provision applicable to mines of all other kinds as well as to coal mines. It therefore reversed the judgment for the defendant company entered in the city court of Bessemer, and remanded the case for a new trial.

EXAMINATION AND LICENSING OF PLUMBERS—CLASS LEGISLATION—CONSTITUTIONALITY OF STATUTE—*Davis v. Holland*, *Court of Civil Appeals of Texas* (May 30, 1914), 168 *Southwestern Reporter*, page 11.—The Revised Statutes of Texas, articles 986-998, provide for the establishment of plumbing boards in cities of the State coming within certain descriptions, and for the examination and certification of plumbers, together with other provisions. E. S. Davis and others brought a suit in the district court of Dallas County to require W. M. Holland and others, mayor and commissioners of the city of Dallas, to carry out the provisions of the statute in question. Judgment in this court was for the defendants, whereupon Davis and his associates appealed, the appeal resulting in the judgment of the court below being affirmed.

There were several questions as to the application of the law to the city of Dallas, but they are not of general interest. The court decided, however, that the city was within the description of those municipalities contemplated by the legislature in the enactment of the statute. Another contention was as to the constitutionality of the statute, and on this point the court held that it was unconstitutional, on grounds that appear in the following quotation from the opinion of the court, which was delivered by Judge Rasbury:

It is further urged, however, by counsel for appellees, that, even though the general laws under discussion are applicable, they are nevertheless without force or validity, because unconstitutional as being in contravention of article 1, section 3, * * * [of the constitution of the State] which provides that:

"All freemen, when they form a social compact, have equal rights, and no men, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public service."

With such contention we agree. The rule is that all laws affecting a particular class of business or vocation in order to meet the require-

ments of the section of the constitution cited must affect all of the specified class uniformly and alike. [Cases cited.] The two concluding articles of the act under discussion do not comply with that rule, since their effect is to permit a firm or partnership of plumbers to practice their trade in the event only one member thereof has successfully passed the examination before the board, while every plumber not a member of such a firm or partnership must in any event submit to the examination and be licensed by the board before he may do so.

Thus, by acquiring membership in a firm, one who has failed to pass the examination required by law and which should be the test alike for all would be permitted to practice his trade in competition with one who had passed the examination, and by which method a privilege would accrue to one of the specified class not conferred upon all others in the same class.

FACTORY REGULATIONS—WASH ROOMS—CONSTITUTIONALITY OF STATUTE—*People v. Solomon, Supreme Court of Illinois (Oct. 16, 1914), 106 Northeastern Reporter, page 458.*—George W. Solomon was convicted in the Sangamon County court of failing to provide wash rooms for employees, as required by an act of the Illinois General Assembly, Laws of 1913, page 359, entitled: "An act to provide for wash rooms in certain employments to protect the health of employees and secure public comfort."

The first section of the act is as follows:

SECTION 1. Every owner or operator of a coal mine, steel mill, foundry, machine shop, or other like business in which employees become covered with grease, smoke, dust, grime and perspiration to such extent that to remain in such condition after leaving their work without washing and cleansing their bodies and changing their clothing, will endanger their health or make their condition offensive to the public, shall provide and maintain a suitable and sanitary wash room at a convenient place in or adjacent to such mine, mill, foundry, shop or other place of employment for the use of such employees.

The remaining sections relate to equipment, enforcement, and penalties. In the Sangamon County court a motion was made to quash the information on the ground of unconstitutionality, also unreasonableness and uncertainty. This motion was denied, and on trial the defendant was convicted, whereupon he sued out a writ of error to the supreme court. Judge Craig delivered the opinion of the latter court, sustaining the act against the charges named, using in part the following language:

Any act of this kind, to be valid, must apply to all employers of labor similarly situated or to all employers of labor where conditions obtain that would require wash rooms. The question remains: Has this object been accomplished by naming, specifically, certain employments to which the act applies in the first section of the act, followed by the words, "or other like business in which employees become covered with grease, smoke, dust, grime and perspiration to such extent that to remain in such condition after leaving their work

without washing and cleansing their bodies and changing their clothing, will endanger their health or make their condition offensive to the public"?

By a fair construction of the law it applies not only to the employments named, but to all other like business of an established or permanent character in which the "employees become covered with grease, smoke, dust, grime and perspiration to such extent that to remain in such condition after leaving their work without washing and cleansing their bodies and changing their clothing, will endanger their health or make their condition offensive to the public." Under such construction the law will apply to all employments in which the conditions exist that make such a law necessary, and it would not be special or class legislation.

Nor, as we construe this law, is it ambiguous and uncertain. It applies to the employments specifically mentioned in the act and to all other like business of permanent character where the same conditions prevail and where there would be the same reasons for the law to apply.

For the above reasons we are constrained to hold the law valid and constitutional, and accordingly the judgment of the county court of Sangamon County will be affirmed.

HOURS OF LABOR—EIGHT-HOUR LAW—EMPLOYMENT BY STATE—CONSTITUTIONALITY OF STATUTE—*Ex parte Steiner, Supreme Court of Oregon (Dec. 23, 1913), 137 Pacific Reporter, page 204.*—Steiner, who was the superintendent of the Oregon State Hospital, was arrested on a criminal complaint charging him with the violation of the provisions of chapter 61 of the General Laws of Oregon, 1913. This law provides that eight hours shall constitute a day's labor in all cases where the State is the employer, either directly or indirectly, and makes its violation by a contractor, subcontractor, or agent a misdemeanor punishable by fine or imprisonment. The acts complained of were that Steiner required an employee to perform labor as a farm hand at the asylum farm for more than eight hours in one day; also that at the same time and place an engineer was required to labor in excess of eight hours. Steiner applied for a writ of habeas corpus after he was arrested on the ground that the statute was in violation of the fourteenth amendment of the Federal Constitution and in contravention of section 20, article 1, of the State constitution, which provides "No law shall be passed granting to any citizen or class of citizens, privileges * * * which, upon the same terms, shall not equally belong to all citizens."

The writ of habeas corpus was denied, Judge Burnett dissenting. Judge McNary, in giving the opinion of the court, said in part:

The State has undoubted power to prescribe for itself such rules of conduct as it deems best suited for the particular work in which it is engaged. By the legislative act in question the State simply declares that no person shall be permitted or required to perform labor for it,

or for any of its administrative agencies, more than eight hours in a calendar day, and that none need apply who desire longer hours of employment. To the contractor of State work, it says no one can work for you in excess of eight hours in a day. No barrier is placed about a laborer preventing him from seeking employment elsewhere. His liberty of selection is not interfered with, nor his right to labor frustrated. Any individual may, with propriety, declare a policy not to employ within the line of his undertaking any person for a longer period of time than eight hours in a day, or any other unit of time that might appeal to his altruism, and direct his agent to observe that regulation. And by parity of reason, the State, speaking through the legislature, may, with equal fitness, inaugurate a rule of conduct not to work its employees more than eight hours a day, and legally direct its instrumentalities of government faithfully to observe such mandate. The terms of the employment are by this statute publicly proclaimed, and if a person insists upon working more than the hours limited by the act, he must seek elsewhere the engagement of his labor.

HOURS OF LABOR—EIGHT-HOUR LAW—POLICEMEN AND FIREMEN—*Albee v. Weinberger, Supreme Court of Oregon (Feb. 17, 1914), 138 Pacific Reporter, page 859.*—H. R. Albee, mayor of Portland, Oreg., applied for a writ of habeas corpus to Andy Weinberger, constable. This was granted by the court. Albee had been arrested on complaint that he had violated the provisions of chapter 61, General Laws of Oregon, 1913, in permitting and requiring, as mayor, a designated fireman and a specified policeman to labor at their several duties more than eight hours in one day, when there was no emergency demanding the performance of such extra service. The supreme court held that the statute was not violated, not being applicable to the designated employments.

The statute in question (chapter 61, General Laws of 1913) fixes an eight-hour day in all cases where labor is employed by the State, county, school district, municipality, or municipal corporation or subdivision, either directly or through another, except in cases of necessity, emergency, or where public policy absolutely requires it.

Judge Moore first quoted the section in question, and, holding that policemen and firemen are not laborers within the meaning of this act, used in part the following language:

Giving to the term "laborer," as used in the enactment quoted, the most extensive definition applicable, it is not believed that a fireman or a policeman, employed by the city of Portland, or the services which he is ordinarily required to perform for it, makes either a laborer within the meaning of that word. It will be remembered that by law of that municipality all officers and members of the fire and police departments are required to take and subscribe their names to an oath of office.

The firemen and policemen of the city of Portland, when once selected, are not subject to dismissal upon the whim of the appointing

power, or at the command of some political boss. Governed by the civil-service rules, a member of the fire or police department can hold his public position as long as he pleases, provided his physical ability continues, and he remains faithful to the trust. The appointing power being thus unable permanently to discharge a fireman or a policeman, he is neither a servant nor an employee, but, having taken an oath faithfully to perform the duties devolving upon him, he is an officer, and therefore not a laborer within the meaning of chapter 61, Gen. Laws Oreg. 1913.

It was also held that in any case the statute had not been violated, Judge Moore saying on this point:

The services required to be performed by the firemen, though arduous and dangerous at times, requiring vigor and courage, the work so demanded is not constant; and, while the members of the fire department must at all times be ready to respond to alarms whenever given, they are not subjected to active toil 8 hours in any 24, except in cases of emergency which the statute recognizes as a deviation from the prescribed rule.

Policemen, however, must, during the time limited for a performance of their duties, persistently and constantly patrol their beats, except when entering a building in the interest of the service, or answering an inquiry or protecting, delivering, or committing a person when arrested. While on duty they are not permitted a moment's rest but are actively engaged in the execution of their work as guardians of the peace and safety of the community. In the case at bar, as the members of the police department are divided into three shifts of eight hours each, the changes of the watch relieve those who have been on duty from performing more than the prescribed number of hours of service, except in cases of emergency.

Therefore, on both grounds referred to here, there has been no violation of the provisions of the statute. It follows from these considerations that the petitioner should be discharged; and it is so ordered.

HOURS OF LABOR—EIGHT-HOUR LAW—PUBLIC WORKS—CONSTITUTIONALITY OF STATUTE—*Sweetser v. State, Court of Appeals of Maryland* (Mar. 18, 1914), 90 *Atlantic Reporter*, page 180.—Frank B. Sweetser was convicted in the criminal court of Baltimore City of violating the hours of labor law, Acts of 1910, ch. 94, secs. 2 and 3, which provides that in the case of contractors with the city of Baltimore (as well as the city itself) 8 hours shall constitute a day's labor, that employment shall not be for longer except in cases of emergency, that additional pay shall be given in case of longer hours, and that the pay shall be the current rate of per diem wages in the locality where the labor is performed. On appeal the judgment of conviction was affirmed. The contractor in question had employed men at an hourly wage of 19 cents, the usual wage for similar labor being \$1.90 per day of 10 hours. While not required to do so, the men worked 10 hours in order to receive the full daily wage.

The defense was largely on the ground of the unconstitutionality of the law. The first point was that the contractors were deprived of property without due process of law, in violation of the fourteenth amendment of the Federal Constitution. While stating that several similar laws had been declared unconstitutional in other States, the court followed, among other cases, the decision of the United States Supreme Court in *Atkin v. Kansas*, 191 U. S. 207, 24 Sup. Ct. 124 (Bul. No. 50, p. 177), and quoted extensively from the opinion of Mr. Justice Harlan therein, sustaining the law. Other objections, that the law places an unauthorized restraint upon a municipal corporation, and that it denies the equal protection of the laws because of the fact that it is applicable to contractors with Baltimore only, were also determined to be invalid.

HOURS OF LABOR—EIGHT-HOUR LAW—PUBLIC WORKS—LOCK AND DAM FURNISHING POWER—*Chattanooga & Tennessee River Power Co. v. United States, United States Circuit Court of Appeals, Sixth Circuit (Dec. 2, 1913), 209 Federal Reporter, page 28.*—The company named was convicted in the district court of violation of the eight-hour law of August 1, 1892, ch. 352, 27 Stat. 340 (U. S. Comp. Stat. 1901, p. 2521). This statute forbids the employment of laborers and mechanics by a contractor on a public work of the United States more than eight hours within a calendar day, except in cases of emergency. The company contended that the building of the lock and dam on which it was engaged was not a "public work."

The facts, as admitted by the demurrer of the company to the complaint, which the lower court overruled, were that the company contracted to build the dam, furnishing the materials, except a specified portion which was furnished by the United States, and to vest title in the United States; and it does this work in consideration of a grant of right to use the water power produced by the dam.

The court of appeals affirmed the decision and judgment of the lower court, on the ground that the principal object of the building of the dam by the Government was the benefit to navigation, and that it was a public work within the act.

HOURS OF LABOR—PUBLIC LAUNDRIES—CONSTITUTIONALITY OF ORDINANCE—*Ex parte Wong Wing, Supreme Court of California (Jan. 16, 1914), 138 Pacific Reporter, page 695.*—Wong Wing was convicted of violation of the provisions of an ordinance of the city of San Francisco, requiring cessation of work in laundries between the hours of 6 o'clock p. m. and 7 o'clock a. m. He applied for a writ of habeas

corpus, and contested the constitutionality of the law. The court discharged the writ, a part of the opinion of the court being as follows:

This court and the Supreme Court of the United States have declared constitutional an ordinance very similar to the one before us, where the restriction upon the hours of labor required the cessation of work in public laundries between the hours of 10 o'clock p. m. and 6 o'clock a. m.

It is settled law that such ordinances operate alike upon all persons and property similarly situated, and that the motives impelling the legislators who adopt such regulations are immaterial, unless it appear that the laws operate inequitably. We are therefore to determine whether the limitation of the time of labor in public laundries to 11 hours each day is a restriction so unreasonable that it invades the constitutional rights of persons engaged in the laundry business. We can not say that it does. Very many, perhaps a majority of, occupations, employments, and forms of business in San Francisco are conducted during less than 11 working hours a day. The authority of the municipal legislature to prescribe hours of cessation from labor in laundries must be conceded, under the authorities cited above, and we think the fair measure of the extent of that power is the usual period of business activity in similar sorts of employment. We can not say, therefore, that the restriction of the hours of activity provided in the ordinance here attacked is an unconstitutional exercise of the legislative will of the board of supervisors of the city and county of San Francisco.

HOURS OF LABOR—TEN-HOUR LAW—CONSTITUTIONALITY OF STATUTE—*State v. Bunting*, Supreme Court of Oregon (Mar. 17, 1914), 139 Pacific Reporter, page 731.—F. O. Bunting was convicted in the circuit court of Lake County of employing a man to labor in his manufacturing establishment for more than ten hours in one day, in violation of the act, chapter 102, Acts of 1913. This conviction was affirmed on appeal over the defendant's contention that the act in question is unconstitutional.

In setting aside the arguments made against the act, Judge Bean, who delivered the opinion of the court, used in part the following language:

By the adoption of the fourteenth amendment it was not designed nor intended to curtail or limit the right of the State under its police power to prescribe such reasonable regulations as might be essential to the promotion of the peace, welfare, morals, education, or good order of the people.

In order to warrant declaring the act violative of the fundamental law, it should be shown that in the light of the world's experience and common knowledge the act under consideration is palpably and beyond reasonable doubt one that will not tend to protect or conserve the public peace, health, or welfare in its enforcement. It is by no means clear beyond a reasonable doubt that the law will not promote the peace, health, and general welfare of citizens of the State, or that longer hours of labor in factories would not be injurious to the health

as declared by the act, or that the act is repugnant to the Constitution. The presumption, therefore, is in favor of the wisdom and the correctness of the legislative finding and determination that the law is a necessity for the protection of the health, well-being, and general welfare of the public; that the regulation prescribed by the enactment will tend to correct the evil at which it is aimed. The courts can not set aside the legislative decree without intrrenching upon the prerogatives of a coordinate branch of the State government, and usurping the powers of the legislature.

The law does not prevent the laborer from working as many hours per day as he sees fit, and does not violate his right to labor as long as he may desire, but only prohibits his being employed in any mill, factory, or manufacturing establishment more than a certain number of hours in any one day.

The act applies to all the people in the State who employ labor in mills, factories, or manufacturing establishments. In the very nature of things the occupations affected by the law furnish a reasonable basis for the statutory regulation. In the light of the former decisions of this court the classification is not unreasonable. [Cases cited.]

It is contended by counsel for defendant that the provision for employees to work overtime not to exceed three hours in any one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage, renders the whole act void. It is clear that the intent of the law is to make 10 hours a regular day's labor in the occupations to which reference is made. Apparently the provisions permitting labor for the overtime on express conditions were made in order to facilitate the enforcement of the law, and in the nature of a mild penalty for employing one not more than three hours' overtime. It might be regarded as more difficult to detect violations of the law by an employment for a shorter time than for a longer time. This penalty also goes to the employee in case the employer avails himself of the overtime clause. Reasonable modes of enforcing a statute should be upheld.

Legislative provisions are frequently made that a portion of a fine for the infraction of a statute shall be paid to the informer. The aim of the statute is to fix the maximum hours of service in certain industries. The act makes no attempt to fix the standard of wages. No maximum or minimum wage is named. That is left wholly to the contracting parties.

The statute under which the complaint is made in this case is not violative of the Constitution of the United States or of this State. As a consequence, the judgment of the lower court is affirmed.

HOURS OF LABOR OF WOMEN—CONSTITUTIONALITY OF STATUTE—LIBERTY OF CONTRACT—EQUAL PROTECTION OF THE LAWS—*Riley v. Massachusetts, United States Supreme Court (Mar. 23, 1914), 34 Supreme Court Reporter, page 469.*—Richard G. Riley was convicted in the superior court for the county of Bristol upon a criminal complaint brought against him charging him with the violation of a statute of the State which limits the hours of labor of women and children, and requires a schedule of work and meal hours to be posted, with penalties for departure therefrom.

The specific charge upon which the conviction was based was the employment of a woman at a time other than set forth in the schedule posted in her workroom in a cotton mill. The conviction was affirmed by the supreme judicial court of the State, 210 Mass. 387, 97 N. E. 367 (Bul. No. 99, p. 715); and the case then went to the United States Supreme Court on error, where the decision of the State court was affirmed, Mr. Justice McKenna delivering the opinion, which is in part as follows:

Section 48, it is urged, not only prohibits the employment of women more than 10 hours a day, but that (quoting the section) "the employment of such person [woman] at a time other than as stated in said printed notice, shall be deemed a violation of the provisions of this section."

The provision is arbitrary and unreasonable, it is insisted, in that it requires the employer to post a notice in a room in which women and minors are permanently employed in laboring only six hours a day, and makes it a crime if such person is allowed to work for five minutes at a time other than as stated in the notice. But if we might imagine that an employer would so enlarge the restrictions of the statute, or be charged with violating it if he did, we yet must remember that, as it was competent for the State to restrict the hours of employment, it is also competent for the State to provide administrative means against evasion of the restriction. [Cases cited.] Neither the wisdom nor the legality of such means can be judged by extreme instances of their operation. The provision of section 48 can not be pronounced arbitrary. As said by the supreme judicial court, the statute "requires the hours of labor to be stipulated in advance, and then to be followed until a change is made. It does not by its terms establish a schedule of hours. This is left to the free action of the parties. Nor does it in the sections now under consideration restrict the right to labor to any particular hours. It simply makes imperative strict observance of any one table of hours of labor while it remains posted.

In other words, the purpose of the posting of the hours of labor is to secure certainty in the observance of the law, and to prevent the defeat or circumvention of its purpose by artful practices.

HOURS OF SERVICE—RAILROADS—CASUALTY OR UNAVOIDABLE ACCIDENT—*United States v. Northern Pacific Railway Co., United States Circuit Court of Appeals, Ninth Circuit (Aug. 3, 1914), 215 Federal Reporter, page 64.*—The company named was prosecuted for alleged violation of the hours of service act in keeping a conductor and two brakemen on duty more than 16 hours without 8 consecutive hours off duty. The crew which operated train No. 303 usually left Tacoma at 1.40 p. m., arriving at Portland at 6.45 p. m., making, with the 30 minutes they were required to report before starting, 5 hours and 35 minutes. Returning they left Portland at 7.25 a. m. and reached Tacoma at 12.35 p. m., being on duty 5 hours and 40 minutes. Between Tacoma

and Lake View is a single track over which 28 trains of three different railroad companies are operated daily. On the date in question, May 12, 1913, train No. 303 left Tacoma at 1.40 p. m., as usual, but another train was derailed on the track in front of it about 10 minutes later and 6 minutes before the two trains would have met. It was a serious wreck with loss of life and much damage to the train and track. The crew of train No. 303 were delayed until 6 p. m., when they were transferred to train No. 314, which had come from Portland, and took that train back into Portland, arriving at 12.30 p. m. on the next day. After being off duty 6½ hours at Portland they made their regular run the next morning and in so doing were on duty a total of about 17 hours without having had 8 consecutive hours off duty. The court decided that these conditions constituted a case of unavoidable accident, and that the company was not liable, affirming a judgment of the district court to this effect.

HOURS OF SERVICE—RAILROADS—CONSTITUTIONALITY OF STATUTE—INTERSTATE COMMERCE—*Erie Railroad Co. v. People of the State of New York*, Supreme Court of the United States (May 25, 1914), 34 Supreme Court Reporter, page 756.—The State of New York brought action against the railroad company named to recover a penalty for violation of the labor law as amended by chapter 627 of the Laws of 1907. The latter act made it unlawful for any operator of a railroad to require or permit any telephone or telegraph operator who spaces trains under the block system to be on duty for more than 8 hours in a day of 24 hours, except in cases of emergency. The trial term of the New York Supreme Court found the company guilty and liable to a fine of \$100. The appellate division reversed this judgment and their judgment was in turn reversed by the court of appeals. The United States Supreme Court finally reversed this last judgment, finding the statute unconstitutional because Congress, by enacting the Federal hours of service act applying to interstate railroads, had removed the subject from the field of State control. The complaint charged the company with requiring and permitting one David Henion, a telegraph operator, to be on duty more than 8 hours on the first day of November, 1907. The Federal act did not go into effect until March 4, 1908, so that the alleged offense occurred between the enactment and the taking effect of that act. Mr. Justice McKenna, in delivering the opinion of the United States Supreme Court, spoke in part as follows:

The relative supremacy of the State and national power over interstate commerce need not be commented upon. Where there is conflict, the State legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the State ceases to exist. [Cases cited.]

This is the general principle. It was given application to an instance like that in the case at bar in *Northern P. R. Co. v. Washington*, 222 U. S. 370, 32 Sup. Ct. Rep. 160. [See Bul. No. 99, p. 718.] The [State supreme] court held that the act of Congress did not apply because of its provision that it should not take effect until one year after its passage, and until such time it should be treated as not existing.

We reversed the judgment on the ground that the view expressed was not "compatible with the paramount power of Congress over interstate commerce," and we considered it elementary that the police power of the State could only exist from the silence of Congress upon the subject, and ceased when Congress acted or manifested its purpose to call into play its exclusive power.

The reasoning of the opinion and the decision oppose the contention of defendant in error and of the court of appeals, that the State law and the Federal law can stand together, because, as expressed by the court of appeals, "the State has simply supplemented the action of the Federal authorities," and, on account of special conditions prevailing within its limits, has raised the limit of safety; and the form of the Federal statute, although "not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental State legislation if necessary."

We realize the strength of these observations, but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.

Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the "hours of service" law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it.

HOURS OF SERVICE—RAILROADS—EMERGENCIES—CONSTRUCTION OF STATUTE—*United States v. Southern Pacific Co.*, *United States Circuit Court of Appeals, Eighth Circuit* (Nov. 13, 1913), 209 *Federal Reporter*, page 562.—The United States brought action against the railroad company named to recover penalties for alleged violation of the hours of service act of 1907. The company maintains at Ogden, Utah, a train dispatcher's office operated continuously day and night. There was employed there a chief dispatcher, who had charge of the office and supervision of the six operators. These men worked ordinarily in eight-hour "tricks," two working together. Operator Johnson was taken ill on August 27, 1912, and did not report for duty until September 2. The company being unable to find a properly qualified substitute, other operators were kept at work 12

hours per day, as follows: Hoover on August 27, 28, and 29; Sewall on August 29, 30, and 31; Small on August 30 and 31 and September 1; and Miller on September 1, 2, and 3. The complaint demanded a \$500 penalty on each of the 12 counts arising from these facts. The chief train dispatcher did not ordinarily have anything to do personally with the operation, but could operate the telegraph. The hours of service act allowed operators to exceed the eight-hour limit in cases of emergency, for not more than three days in one week.

The district court rendered judgment for the defendant. On appeal, the circuit court also held the sickness of the operator and the impossibility of getting another to constitute an emergency within the meaning of the law, overruling the contention that the railroad company was obliged to keep extra operators under pay for use in such cases.

HOURS OF SERVICE—RAILROADS—EMERGENCIES—FIREMAN WATCHING ENGINE—*Northern Pacific Railroad Co. v. United States, United States Circuit Court of Appeals, Ninth Circuit (May 4, 1914), 213 Federal Reporter, page 577.*—The company named was charged with violation of the hours of service act in two instances. In each the train was held up by an unusually heavy storm and snowfall, and the crew, with the exception of the fireman, relieved from duty in connection with the movement of the train. The fireman in each case was required to continue watching his engine. The court held that the law was violated by this action, since, though the firemen were not actually engaged in the movement of the train while thus employed in watching and keeping up the fires, they were not enjoying the period of rest that the law contemplated and was intended to secure for all members of a train crew after the designated term of service.

The case was held not to come within the provisions of the act as to emergencies, "if for no other reason, because the uncontradicted evidence, as well as the answer of the defendant company itself, shows that each of the trains in question was stopped by direction of the railroad company, sidetracked, and their respective crews laid off for rest within 16 hours from the time they left Missoula, for the very purpose of complying with the said statute, excepting only the two named firemen."

HOURS OF SERVICE—RAILROADS—EMPLOYEE ON DUTY—*Osborne's Administrator v. Cincinnati, New Orleans & Texas Pacific Railway Co., Court of Appeals of Kentucky (Mar. 24, 1914), 164 Southwestern Reporter, page 818.*—F. H. Osborne was killed while employed by the company named, as a brakeman, in interstate commerce, on January 17, 1912. His administrator brought suit under the Federal

employers' liability act, alleging violation of the hours of service act, as well as negligence of the engineer and conductor of the train. Judgment was for the defendant company on both points in the circuit court of Pulaski County, and on appeal, the court of appeals found no proof of negligence, either in the matter of overemployment or otherwise, and affirmed the judgment of the court below.

An unusual point was raised in connection with the contention as to the hours of service, Osborne having ridden on January 16 under orders from a point some miles distant from his place of duty, on the day of the fatal injury, as a "deadhead." As to this, Judge Carroll, who delivered the opinion of the court, said in part:

Without going into detail as to the time Osborne was engaged on duty in the 24 hours preceding 6.15 a. m. on the morning of the 17th, it is sufficient for the purposes of this case to say that, if the time during which Osborne was "deadheading" on the 16th between Somerset and Oakdale is to be counted as hours of service, he had been on duty 16 hours in the aggregate in a 24-hour period without having had 8 consecutive hours off duty before he left Oakdale on the morning of the 17th at 6.15 a. m. So that the question arising is: Was Osborne engaged in service, within the meaning of the act, while "deadheading" during the five hours that it took the passenger train on which he was riding to run from Somerset to Oakdale?

He had been ordered by the train dispatcher to "deadhead" from Somerset to Oakdale so that he might be in Oakdale on the morning of the 17th in time to leave with his train at 6.15 a. m., and it is shown that he received compensation for the time it took the train on which he was "deadheading" to run from Somerset to Oakdale. The record further shows that, when a railroad employee is "deadheading," as Osborne was in going from Somerset to Oakdale on the 16th, he does not have any duties whatever to perform in connection with the movement of the train on which he is "deadheading"; that he really occupies the attitude of a passenger free from any care or responsibility relating to the operation or management of the train.

Although we have made a very thorough examination of the cases involving the construction of this act, we have not found one presenting or deciding the question whether an employee who is "deadheading" is engaged in service connected with the movement of any train within the meaning of the act.

The Interstate Commission, however, has promulgated rule No. 74, providing that "employees 'deadheading' on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are 'deadheading,' are not while so 'deadheading' 'on duty' as that phrase is used in the act regulating the hours of labor." This construction, although it does not have the binding force of a court decision, is yet entitled to great weight on account of the important duties this high commission exercises in administering these remedial Federal statutes, and we concur in its soundness when applied to the facts of this case. Opposing this interpretation, the argument is made for the plaintiff that

this act should be so construed as to secure for employees relief from cares or responsibilities or orders or authority of any kind connected with their employment during the hours of rest specified in the act. But the act is not fairly susceptible of this construction. In carefully chosen words it describes an employee as a person who is "actually engaged in or connected with the movement of any train," and the hours of service feature of the act only applies to such a described person. The plain reading of the act forbids its application to an employee who is not actually engaged in or connected with the movement of any train, and the railroad company does not violate the act, nor does the employee come within its protecting provisions, unless it be shown that he was actually engaged in or connected with the movement of the train in the manner we have described for a longer period than the act allows without having the rest allowed by the act. This being our construction of the act, Osborne, at the time of his death, had not been engaged in service for a longer period than 16 consecutive hours, nor had he been on duty 16 hours in the aggregate in 24 without having had at least 8 consecutive hours off duty before he again went on duty, as, when there is added to the 5 hours' rest he had at Oakdale between 12.45 and 5.45, the time he was "deadheading," he was off duty considerably more than 8 hours.

HOURS OF SERVICE—RAILROADS—MOVEMENT OF TRAINS—*Great Northern Railway Co. v. United States, United States Circuit Court of Appeals, Ninth Circuit (Feb. 24, 1914), 211 Federal Reporter, page 309.*—This action was brought by the Government against the railway company named for violation of the hours of service act. One Ed. Bergen, a fireman, after having been employed for 16 hours, was kept at work for 8 additional hours as an engine watchman while the train and locomotive were tied up at a siding. The lower court had rendered judgment for the United States, and on the defendant's appeal this judgment was affirmed. Judge Morrow, speaking for the court, said:

We can not believe that it was the intention of Congress that the word "movement" should be restricted to the actual revolution of the wheels of a train or locomotive engaged in interstate commerce, for, if that interpretation were the correct one, obviously the very object of the act, the promotion of the safety of employees and travelers upon railroads, would be frustrated. The sidings of a railroad are a part of its system and are indispensable to the proper operation and movement of its trains. Tying up on a siding for any purpose, whether to await orders, or for the passing of other trains, or for any other purpose connected with the transportation of freight or passengers, is as much a part of the general movement of a train as the actual running thereof on the main line and at scheduled periods. The fact that during the 24-hour period he was employed for 16 hours as fireman and for 8 hours as engine watchman does not lessen the offense.

HOURS OF SERVICE—RAILROADS—OFFICES OPERATED NIGHT AND DAY—*United States v. Atlantic Coast Line Railroad Co., United States Circuit Court of Appeals, Fourth Circuit (Feb. 3, 1914), 211 Federal Reporter, page 897.*—In this case the trial court had rendered a judgment for the defendant, who was charged with violation of the hours of service act in employing certain telephone and telegraph operators for about 11 hours daily. This decision was reversed on appeal. The question of construction hinged on the interpretation of the clauses "continuously operated day and night" and "operated only during the daytime." If the office, which was regularly kept open from 6.30 a. m. to 10.15 p. m., should be adjudged to belong to the former class, the operators could be legally employed only 9 hours, and the law had been violated; if to the latter, they might be employed up to 13 hours.

The court decided that since this office must be classified under one or the other of the two designations, it must be the former. Judge Knapp, who delivered the opinion of the court, discussed this matter fully, concluding his remarks as follows:

If this conclusion gives greater effect to the words "operated only during the daytime" than to the words "continuously operated night and day," we think the objects of the law require that preference be accorded to a construction which recognizes the legislative intent to permit 13 hours of service in offices kept open only such number of hours in the aggregate as do not materially or substantially exceed the length of an ordinary day, and to prohibit more than 9 hours' service in offices kept open such number of hours in the aggregate as necessarily include a material or substantial portion of the night.

HOURS OF SERVICE—RAILROADS—OFFICES OPERATED NIGHT AND DAY—*United States v. Missouri, Kansas & Texas Railway Co., United States District Court, District of Kansas (Jan. 13, 1913), 208 Federal Reporter, page 957.*—This was an action by the Government to recover a penalty for violation of the hours of service act (U. S. Comp. Stat. Supp. 1911, p. 1321). This provides that operators, train dispatchers, etc., in offices and stations operated continuously night and day shall not be permitted to remain on duty more than 9 hours out of 24, while in those operated only during the daytime a longer period is allowed. A statement of facts was agreed upon, and the case referred directly to the court without trial by jury. The alleged offense consisted in employing one operator daily from 8 a. m. to 12 noon and from 1 p. m. to 7 p. m., and another operator from 7 p. m. to 12 midnight, and from 1 a. m. to 6 a. m., in the office at Coffeyville, Kans. Since neither operator was employed continuously, and the office was closed entirely between 6 a. m. and 8 a. m., the company contended that the 9-hour limit of service did not apply to this situation. The court decided against this contention and found the company guilty of vio-

lation of the law, Judge Pollock, who spoke for the court, saying that from the facts as stipulated he was of the opinion, on both authority and the very reason of the matter, that defendant had violated the act as charged.

HOURS OF SERVICE—RAILROADS—SWITCH TENDERS—*Missouri Pacific Railway Co. v. United States, United States Circuit Court of Appeals, Eighth Circuit (Feb. 16, 1914), 211 Federal Reporter, page 893.*—The district court, on the trial of the railway company for alleged violation of the hours of service act, had rendered a judgment in favor of the United States. On appeal, this was reversed. The question was as to whether R. Connell and J. W. King, switch tenders in Kansas City, were included among the "operators, train dispatchers," etc., who the act provides shall not be employed more than 9 hours during any 24, or whether they might be employed up to 16 hours. Judge Carland, in delivering the opinion of the court, said:

When all is said about the duties of these men, it comes to this: Their primary duty was to throw these switches whenever necessary, and the telephones were used to inform them from time to time what was wanted in regard to the switching and in reporting to those who intended to use the switches, the preparation that had been made for such use. It did not differ except in complexity of operation from the service performed by a brakeman who runs ahead of his train, turns a switch, and swings his hand by day, or lantern by night to signal the engineer. If one is within the proviso of section 2, so is the other, unless it be held that the mere use of the telephone brings one switchman within the 9-hour provision and leaves another who does not use it under the 16-hour clause, although the service performed is the same. But we apprehend that there will be no contention that Congress fixed the period of 9 hours for certain employees because of the use of the telephone. The difference in the hours of labor fixed by section 2 was based upon the character of the service rendered by the employee, not upon the use of the telephone. R. Connell and J. W. King, beyond question, were not operators or dispatchers.

HOURS OF SERVICE — RAILROADS — TELEGRAPH OPERATORS —
KNOWLEDGE OF SUPERIORS—*United States v. Oregon-Washington Railroad & Navigation Co., United States District Court, Eastern District of Washington (April 23, 1914), 213 Federal Reporter, page 688.*—The United States brought action against the railroad company named for violation of the hours of service act in permitting one Longabaugh, a telegraph operator at a station operated day and night, to work more than the 9 hours limited by the act, on April 21, 1913, and the 9 succeeding days. The stipulated facts showed

that the employee was agent at Wallula, and after acting as agent from 7 a. m. to 7 p. m. remained on duty as telegraph operator until 12 midnight; also that before the employee performed any excessive hours of service he was instructed by his superior officer not to work in excess of 9 hours in any 24-hour period. The sole question for decision was whether these instructions constituted a defense on the part of the company. This question was decided in the negative, Judge Rudkin, who delivered the opinion, saying:

It is now well settled that the safety appliance act and kindred statutes impose positive and absolute duties on carriers, the non-performance of which is not excused by the exercise of reasonable diligence or due care on their part, and the hours of service act admits of no other rational construction.

It is urged that the words "require or permit" imply consent or knowledge on the part of the employer, and this is perhaps their common significance; but the word "permit" also means a failure to prohibit by one who has the power and authority to do so, and in my opinion the term is here used in the latter sense.

I am of opinion that the knowledge of the agent, Longabaugh, was the knowledge of the company, and that the instructions given by his superior officer not to work excessive hours, or want of knowledge on the part of his superior officers that he did in fact work excessive hours, is no defense.

HOURS OF SERVICE—RAILROADS—UNAVOIDABLE ACCIDENT—CONSTRUCTION OF STATUTE—*United States v. Atchison, Topeka & Santa Fe Railway Co., United States District Court, District of Arizona (Apr. 10, 1914), 212 Federal Reporter, page 1000.*—The United States brought action against the railway company named for violation of the hours of service act. Two distinct violations were alleged. In the first case the delay which made the overtime employment necessary was brought about by the derailment of a freight train ahead of the passenger train concerned. The statute provides that the act shall not apply "where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal and which could not have been foreseen."

After a full discussion of the point the court decided that the word "terminal" in this case would be construed to mean the point where the crew began its run, and not the intermediate station where the train might have been tied up and the crew eventually replaced by another. Judgment was given for the defendant, therefore, on the counts involving this alleged violation.

In the second instance the train hauled, by means of a chain, a freight car with a broken drawhead, which car did not contain live stock or perishable freight. This in itself was unlawful, and it appeared that it contributed to the delay. On this part of the complaint

the company was adjudged guilty. Judge Sawtelle, who delivered the opinion of the court, spoke as follows:

The proviso in the statute allows the carrier credit for all lawful delays caused to a train crew on its run by casualty, unavoidable accident, or act of God, or by any cause not known to, or which could not have been foreseen, by the officers or agents of the carrier at the time the crew started from its terminal on its run, but allows no credit for delays not covered by the proviso; and, consequently, if the train is delayed by casualty, accident, or act of God, or other lawful cause, for one hour at one place and another hour at another place, and then is delayed another hour at another place by a cause which was known to or could have been foreseen by the officers and agents of the carrier at the time the crew left the terminal or started on its run, and the regular schedule time of the train was 16 hours, and in consequence of the delays mentioned, the time taken for the run is 19 hours, the carrier is liable, because it was entitled to have spent 18 hours only on the run, and not 19 hours. It being thus unlawful to haul this car with chains, and the evidence without dispute showing that delays to the train between Cliffs and Winslow were caused by this car, it follows that such delays were not the result of casualty or unavoidable accident, and not within the proviso.

HOURS OF SERVICE—RAILROADS—UNAVOIDABLE ACCIDENT—CONSTRUCTION OF STATUTE—*United States v. Chicago, Milwaukee & St. Paul Railway Co.*, *United States District Court, Western District of Wisconsin* (Apr. 16, 1914), 212 *Federal Reporter*, page 574.—Suit was brought against the railroad company named for violation of the Federal hours of service act by keeping four employees on duty for 18½ hours on July 18, 1912. A plea to guilty of technical violation of the law was filed. The delay in reaching the destination and relieving the men from duty was caused by the use of warm and impure water from a creek, this being made necessary by heavy switching on a temporary logging road. The injectors of the engine were in good condition, but failed to work properly with the water thus supplied, so that finally the engine had to run alone to the end of the line and secure water and go back and haul the train to the terminus. These circumstances, the court decided, constituted a case of unavoidable accident, so that the company would not be compelled to pay a penalty, but only the costs of the proceedings.

HOURS OF SERVICE—RAILROADS—UNAVOIDABLE CASUALTY—CONSTRUCTION OF STATUTE—*United States v. New York, Ontario & Western Railway Co.*, *United States District Court, Northern District of New York* (Sept. 11, 1914), 216 *Federal Reporter*, page 702.—The railroad company named, operating a railroad with termini in New Jersey and New York, employs at its division headquarters in Norwich, N. Y., train dispatchers and also so-called "copy operators,"

who act as assistants to the dispatchers in a clerical capacity, two of whom, however, are competent to act as dispatchers in emergencies.

Violations of the Federal hours of service act were charged against this company, occurring on November 14, 1912, and July 22, 1913. On the former date the mother of a dispatcher, who was a member of his household, died suddenly, and a copy operator, who had had 8 hours' rest since performing his regular duties, was called upon to serve as dispatcher after the previous dispatcher had worked his regular "trick" of 8 hours and 1 hour additional; the substitute worked as dispatcher from midnight until 7 a. m. On the latter date the dispatcher was taken severely ill, and the same copy operator served during the same hours.

The judgment was in favor of the defendant, the court holding that the company was exempted from responsibility for the overtime work of the employee by the terms of the act. The grounds upon which this decision are based are shown by the following extracts from the opinion as delivered by Judge Ray:

After providing for the time beyond which in any 24 hours the operator can not be employed without incurring the prescribed penalty, the act provides as follows:

"Provided that the provisions of this act shall not apply in case of casualty, or unavoidable accident, or the act of God."

As to the transaction of July 22, 1913, the sudden and unexpected sickness of Brookins absolutely disabled him. It was not an accident, within the commonly accepted definition of the word. Was it a casualty? Brookins was a part of the railroad itself, in that he was one of its employees engaged in the running and operation of its trains. Without Brookins and others like him the road could not operate, and hence, when he broke down suddenly and unexpectedly, the railroad itself, through its operating forces, was acted upon. If Brookins, on his way to take the trick, had been run over by an automobile and killed or seriously injured, without fault on his part, so as to disable him, there would have occurred, not only an accident (unavoidable so far as he and the defendant railroad were concerned) but a casualty. In my judgment in such a case the provisions of the act would not apply.

After showing that the death of the dispatcher's mother in the evening a short time before the time for him to commence duty was "either a casualty, an unavoidable accident, or the act of God," the opinion continues:

If, then, a casualty, or an unavoidable accident, or an act of God, occur and intervene, making it necessary to work an employee overtime, assuming the railroad company has done its duty in having in its employ a reasonable number of employees to take care of ordinary conditions, including mishaps and occurrences reasonably to be apprehended and liable to occur, and the employee is worked overtime, the act does not apply.

The other contention of the defendant, that the law did not in any case apply to the employee Towner, a "copy operator," since in the previous employment during the 24 hours he had not been an operator or train dispatcher, was held to be untenable, Judge Ray saying in part:

I think Towner was within the reason and the spirit of the act. He could not within a given 24-hour period work 8 or 9 hours as copy operator, and later and within the same 24-hour period work 8 or 9 hours more as train dispatcher. The very object or purpose of the law would forbid this.

For the reasons previously given, however, the railroad was held within the proviso of the act, and not guilty of the offense alleged.

HOURS OF SERVICE—RAILROADS—WAITING TIME—*United States v. Northern Pacific Railroad Co., United States District Court, Eastern District of Washington (Apr. 21, 1914), 213 Federal Reporter, page 539.*—In this case employees were engaged in running a train during a period covering altogether $17\frac{1}{2}$ hours in one day, but during that time, for $1\frac{1}{2}$ hours while the train was waiting for other trains to pass, their train was placed in the hands of a switching crew and the regular crew relieved from duty. The court held that there was nevertheless a violation of the law, saying that if the necessarily brief period which trainmen have for rest and recreation can be broken into small fragments, they will be wholly deprived of any substantial period for either sleep or rest. The decision in *M., K. & T. Ry. Co. v. U. S.*, 34 Sup. Ct. 26 (see Bul. No. 152, p. 128), was considered as governing this case.

INJUNCTION—CONTEMPT—LIMITATION OF ACTIONS—*Gompers et al. v. United States, Supreme Court of the United States (May 11, 1914), 34 Supreme Court Reporter, page 693.*—The proceedings against Samuel Gompers, John Mitchell, and Frank Morrison for contempt in violating the injunction issued against them and others for continuing a boycott against the Buck Stove & Range Co. were noted in Bulletin No. 152, page 218, and in previous bulletins there mentioned. The matter was brought from the Court of Appeals of the District of Columbia on a writ of certiorari, the principal defense of the petitioners being that of the statute of limitations, Rev. Stat., sec. 1044, U. S. Comp. Stat. 1901, p. 725. Their contention that this statute was applicable and barred the carrying out of the penalty was sustained by the court in its opinion delivered by Mr. Justice Holmes, from which the following is quoted:

It may be assumed for the purpose of our decision that the evidence not only warranted but required a finding that the defendants were

guilty of some, at least, of the violations of this decree that were charged against them, and so we come at once to consider the statute of limitations, which is their only real defense.

The statute provides that "no person shall be prosecuted, tried, or punished for any offense not capital, except * * * unless the indictment is found or the information is instituted within three years next after such offense shall have been committed."

The opinion then recited various speeches and writings of the defendant Gompers, giving the dates of the same, extending up to November, 1908.

Continuing, Mr. Justice Holmes said:

The charges against Mitchell and Morrison are mainly for having taken part in some of the above-mentioned publications, but need not be stated particularly, as all the acts of any substance in Mitchell's case and all in that of Morrison were more than three years old when these proceedings began.

The boycott against the company was not called off until July 19 to 29, 1910, and it is argued that, even if the statute applies, the conspiracy was continuing until that date (*United States v. Kissel*, 218 U. S. 601, 607, 31 Sup. Ct. Rep. 124), and therefore that the statute did not begin to run until then. But this is not an indictment for conspiracy, it is a charge of specific acts in disobedience of an injunction.

It is urged in the first place that contempts can not be crimes, because, although punishable by imprisonment, and therefore, if crimes, infamous, they are not within the protection of the Constitution and the amendments giving a right of trial by jury, etc., to persons charged with such crimes. It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statute, offenses, because trial by jury as it has been gradually worked out and fought out has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure, 3 *Transactions of the Royal Historical Society*, N. S. p. 147 (1885), and that, at least in England, it seems that they still may be and preferably are tried in that way. [English statute and English and American cases cited.]

No reason has been suggested to us for not giving to the statute its natural scope. The English courts seem to think it wise, even when there is seeming reason for the exercise of a summary power, to leave the punishment of this class of contempts to the regular and formal criminal process. *Re Macleod*, 6 Jur. 461. Maintenance of their authority does not often make it really necessary for courts to exert their own power to punish, as is shown by the English practice in more violent days than these, and there is no more reason for prolonging the period of liability when they see fit to do so than in the case where the same offense is proceeded against in the common way. Indeed, the punishment of these offenses peculiarly needs to be

speedy if it is to occur. The argument loses little of its force if it should be determined hereafter, a matter on which we express no opinion, that in the present state of the law an indictment would not lie for a contempt of a court of the United States.

Even if the statute does not cover the case by its express words, as we think it does, still, in dealing with the punishment of crime a rule should be laid down, if not by Congress, by this court. The power to punish for contempt must have some limit in time, and in defining that limit we should have regard to what has been the policy of the law from the foundation of the Government. By analogy, if not by enactment, the limit is three years.

INJUNCTION—CONTEMPT—REVIEW ON HABEAS CORPUS PROCEEDINGS—*Ex parte Heffron et al.*, *St. Louis Court of Appeals* (Dec. 31, 1913), *162 Southwestern Reporter*, page 652.—William H. Heffron, George Ringler, and Oscar Close had been imprisoned for failure to pay a fine levied against them in contempt proceedings in the circuit court of the city of St. Louis. The present case was an original proceeding instituted in the St. Louis court of appeals through a suing out by the parties named of a writ of habeas corpus, the claim being set up that they were improperly restrained of their liberty. The result of the hearing was that the writ was granted and the men released. The petitioners were members of a waiters' union, and with others had been enjoined, among other things, from either singly or in numbers stationing themselves or congregating upon the sidewalk adjoining and in front of plaintiff's place of business, for the purpose of distributing cards or circulars containing statements concerning plaintiff or its business or of addressing remarks concerning plaintiff or its business to persons passing along the sidewalk; from either singly or in numbers patrolling the sidewalks adjoining such place of business, and from preventing or attempting to prevent by the use of force, violence, threats, menaces, or intimidation any person from patronizing the plaintiff's place of business or any of its employees from performing their duties. The petitioner Close was charged with having committed an assault on one Primm within a short time after he had left the plaintiff's establishment, while the other parties were charged with violations of the picketing provisions without violence or intimidation so far as appeared on the record.

Judge Nortoni, who delivered the opinion of the court, stated first that there could be no doubt that a court of equity would restrain persons confederated through a conspiracy to entail substantial injury upon the business of another, as by persuasion of his patrons against their will or interfering with his business through violence or threats, and stated that in the present instance "The judgment of conviction and the commitment issued thereon are wholly insuffi-

cient to justify the punishment as for contempt of the three petitioners for the reasons: First, that the court was without power to make the broad and sweeping order for a violation of which petitioners Heffron and Ringler are convicted; and, second, because it does not appear from the finding of facts that petitioner Close violated the terms of the order on which he was convicted." Cases were cited to support the proposition that one imprisoned as for contempt for violating an order which the court was without authority to make may be released on habeas corpus, of which proposition the court said, "There can be no doubt."

Of the injunction itself Judge Nortoni said in part:

Obviously so much of this injunction as merely restrains defendants singly or in numbers from stationing themselves or congregating upon the sidewalk adjoining and in front of plaintiff's business for the purpose of distributing cards or circulars concerning plaintiff or its business or of addressing remarks concerning plaintiff or its business to persons along the sidewalk avails nothing.

While it was competent for the court to enjoin the defendants from congregating and stationing themselves upon the sidewalk in front of the premises of the catering company so as to interfere with the free ingress and egress from its place of business, no such inhibition is to be found in the order, but instead, it proceeds in broad and sweeping language as though any congregation or standing upon the sidewalk by them was unlawful. In this the injunction exceeded the power of the court in that behalf, unless such conduct is to be prohibited on other grounds.

So much of the injunction as purports to enjoin the petitioners "either singly or in numbers" from patrolling the sidewalk adjoining plaintiff's business avails nothing, for it does not appear what the court intended thereby. This is vague and indefinite. The word "patrolling" involves the idea of one walking to and fro as a guard, but in and of itself implies nothing unlawful. It was certainly competent for the court to enjoin patrolling against patrons or prospective patrons of plaintiff's business from entering there or for the purpose of interfering with its employees. It was competent, too, for the court to enjoin such patrolling as might interfere with the free use of the sidewalk to afford ingress and egress to plaintiff's premises, or such as would be accompanied with threats, intimidation, violence, or conduct that should annoy and deter plaintiff's patrons or employees, but nothing of this kind is enjoined. So much of the injunction as inhibits the defendants from preventing or attempting by the use of force, violence, threats, menaces, or intimidation to prevent any person from patronizing plaintiff's place of business is certainly valid and within the power of the court. So, too, is that portion of the order which forbids petitioners from compelling or attempting to compel by threats, intimidation, or acts of force or violence any of the employees of plaintiff to fail to perform their duties as such employees.

The court then reviewed the evidence on which Heffron and Ringler were convicted, and concluded:

So it appears that, though these petitioners were found to have been engaged in patrolling and picketing, these words in and of them.

selves imply nothing unlawful, and there is no finding that in pursuing the patrolling and picketing they interfered with the free access as by ingress and egress to the premises of the catering company or threatened, intimidated, or coerced either plaintiff, any of its officers, employees, patrons, or in any wise conducted themselves in a manner obnoxious to the law.

As to the assault on Primm by petitioner Close it was said:

The injunction forbids the petitioners from exercising violence or assaulting any person patronizing plaintiff's said place of business or any of plaintiff's employees. If Primm, whom the court finds was assaulted by the petitioner Close, was either a patron of the catering company or one of its employees, the facts should have been so found by the court and stated in the judgment convicting him, for no intendments or implications may be invoked in aid of it. It may be that Close committed an unprovoked assault upon Primm on the sidewalk near plaintiff's place of business, for which Close would be answerable under the criminal laws of the State or under the ordinance of the city, but this alone is not sufficient to render him subject to imprisonment as for contempt for violating the order of the court, which restrains such conduct only when directed against a patron or an employee of the catering company. The mere fact that Primm had recently come out of the catering company's place of business is not sufficient under the strict rule which obtains to sustain the conviction for contempt because of an assault upon him, for we can not infer, and it is not implied, that Primm was either a patron or an employee of the catering company.

It is clear that both the judgment of contempt and the commitment thereon are insufficient to justify the conviction and imprisonment of the petitioners, and they should therefore be discharged.

LABOR ORGANIZATIONS—BOYCOTTS—ANTITRUST LAW—KNOWLEDGE OF MEMBERS OF ORGANIZATION—*Lawlor et al. v. Loewe et al.*, *United States Circuit Court of Appeals, Second Circuit (Dec. 18, 1913)*, 209 *Federal Reporter*, page 721.—This case was before the circuit court of appeals on a writ of error to the District Court of the United States for the District of Connecticut, to review a judgment entered November 15, 1912, in favor of the plaintiffs for the sum of \$252,130, being the amount of a trebled verdict for damages, with interest, costs, and counsel fees. The case is known as the Danbury Hatters' Case, and has been before the courts for nearly a decade. Loewe & Co. were makers of hats in Danbury, Conn., and their products were boycotted by the hatters' union because of a refusal of the employers to unionize their shops. Action for damages was brought under the Sherman Antitrust Act, and the Supreme Court held the act applicable to the case (Bul. No. 75, p. 622). The question under consideration in the present instance was as to the liability of the individual members for the damages found to have been suffered by the company, the circuit

court of appeals affirming the finding of the court below to this effect. On further appeal, this was affirmed by the Supreme Court (p. 140, post). The facts are set forth with sufficient fullness in the portion of the opinion of the court quoted below, which was delivered by Judge Coxe.

When this cause came on for the second trial all of the fundamental questions of law had been disposed of. That the antitrust act is applicable to such combinations as are alleged in the complaint is no longer debatable. It makes no distinction between classes, employers and employees, corporations and individuals, rich and poor, are alike included in its terms. The Supreme Court [208 U. S. 274, 28 Sup. Ct. 301, Bul. No. 75, p. 622], particularly points out that although Congress was frequently importuned to exempt farmers' organizations and labor unions from its provisions, these efforts all failed and the act still remains, after nearly a quarter of a century of trial, unmarred by amendment, in the language originally adopted. In short, the court held that if the plaintiffs proved the conspiracy or combination as alleged in the complaint, they were within the antitrust act and entitled to the damages sustained by them.

The plaintiffs proved, either without contradiction or by testimony which the jury was justified in accepting as true, the following propositions:

First. That they were engaged in making hats at Danbury, Conn., and had a large interstate business, employing union and nonunion labor.

Second. That the individual defendants are members of a trade-union known as the United Hatters of North America, which was organized in 1896 and, with a few exceptions unnecessary to consider, paid dues to the local unions at Danbury, Bethel or Norwalk, Conn. These dues, after deducting a certain percentage for the expenses of the local unions, were sent to the treasurer of the United Hatters.

Third. That the United Hatters were affiliated with the American Federation of Labor, one of the objects of the latter organization being to assist its members in any "justifiable boycott" and with financial help in the event of a strike or lockout.

Fourth. That the United Hatters, through their connection with the Federation of Labor and affiliated associations, exercised a vast influence throughout the country and, by the use of the boycott and secondary boycott, had it in their power to cripple, if not destroy, any manufacturer who refused to discharge a competent servant because he was not a member of the union.

Fifth. That in March, 1901, the United Hatters had resolved to unionize the plaintiff's factory and informed Mr. Loewe to that effect, their president stating that they hoped to accomplish this in a peaceful manner, but if not, they would resort to their "usual methods."

Sixth. That on the morning of July 25, 1902, the plaintiffs' employees were directed to strike and the union men left the factory on that day, the nonunion men the day after.

Seventh. That this strike temporarily paralyzed the plaintiffs' business, and they were not able to reorganize until January, 1903, and then with a force many of whom were unskilled.

Eighth. That almost immediately after the strike a boycott was established and agents of the hatters were sent out to induce the plaintiffs' customers not to buy any more hats of them. This boycott was successful, and converted a profit of \$27,000 made in 1901 into losses ranging from \$17,000 in 1902 to \$8,000 in 1904, destroying or curtailing a large part of the plaintiffs' business carried on between Danbury, Conn., and several other States.

It appears, then, that a combination or conspiracy in restraint of interstate trade was entered into to the great damage of the plaintiffs and that all of the defendants who participated therein or aided and abetted the active workers in the conspiracy or contributed to its support are liable if they knew of its existence.

The principal question of fact, therefore, is, did the defendants know of the conspiracy or is the evidence of such a character that the jury were justified in finding that they must have known of its existence? And here it is important to remember that the law does not require the proof of conspiracy by direct and positive proof. This is true even in criminal cases and the reason therefor is plain. Conspirators do not put their agreements in writing; they do not disclose their identity or publish their plans. They work in the dark, they may never be seen together, their acts may have no apparent relation to each other, but if it appears that they are all working to accomplish an unlawful purpose which is for their common benefit and in the gains of which all are to share, a jury is justified in finding the existence of a conspiracy.

It is not necessary that there be a formal agreement between the conspirators. If the evidence satisfies the jury that they acted in concert, understandingly and with the design to consummate an unlawful purpose, it is sufficient. It is not necessary that each conspirator shall know of all of the means employed to carry out the purposes of the conspiracy.

As to the defendants who were in the employ of the plaintiffs at the time of the strike and participated therein, we understand that it is not pretended that they were ignorant of the general purpose of the United Hatters. As to the remainder, estimated by the defendants' counsel to be about 90 per cent, it is contended that they knew nothing of the purpose of the strike except that it was "to establish union conditions in that particular (Loewe's) factory."

The defendants reside in Bethel, Norwalk or Danbury, all in the same general locality and so near that it is highly improbable that an event of vital importance to one union would not be known to the other two. But in order to show that the dispute between Loewe and the union excited general interest in the community, newspaper articles published in these towns were introduced in evidence, not as proof of the circumstances therein narrated but to show the improbability of the defendants being ignorant of matters which were constantly being made public and were of vital significance to them, relating as they did, to a controversy which might impair or destroy their own means of livelihood. As to 115 of these defendants it was stipulated that if called as witnesses they would testify "that they read with more or less regularity some local newspapers in their respective towns, but not completely or invariably." As to the Journal of the United Hatters, it was stipulated that the secretaries

of the local unions in question received copies which were distributed in the various factories without charge, so that the workmen there could read them if they desired to do so. The plaintiffs introduced the minutes of the meetings of the local unions of which the defendants were members; also extracts from the *Federationist*, a monthly journal of the Federation of Labor and a notice, warning all members of labor unions that they would be held responsible for unlawful acts of such unions, their officers and agents. A copy of this notice was sent to all hatters whose names appeared in the Danbury Directory. It can not be denied that all this evidence was competent as to those who actually received it or had knowledge of it and we think it was for the jury to say whether it was sufficient to put the alleged conspirators upon notice of the illegal measures by which it was proposed to enforce the demands of the defendants.

Without attempting to review the testimony in detail, it suffices to say that the jury were fully justified in finding that the measures adopted by the defendants prevented the free flow of commerce between the States. The great bulk of the plaintiffs' business was in States other than Connecticut, to which States the product of their factory was shipped and the proof shows that they suffered great pecuniary loss, equal at least to the amount found by the jury, because of their inability to sell to their interstate customers.

After discussing the question of the admission of certain testimony, the court decided that while only acts taking place before the commencement of the suit were or could be considered, damages subsequently resulting from such acts had been properly shown in testimony and considered by the jury in arriving at the total damages. The opinion concludes as follows:

No one can examine this voluminous record without being impressed with the fact that the trial was conducted with perfect impartiality and with a determination on the part of the judge that both parties should have an absolutely fair trial. We are convinced that the defendants have had such a trial and that no error was committed which would justify us in imposing upon the parties the expense and delay of a third trial.

The judgment is affirmed with costs.

LABOR ORGANIZATIONS—BOYCOTTS—ANTITRUST LAW—LIABILITY OF MEMBERS FOR DAMAGES—*Lawlor v. Loewe*, *Supreme Court of the United States* (Jan. 5, 1915), 35 *Supreme Court Reporter*, page 170.—This case was before the Supreme Court on a writ of error to the United States Circuit Court of Appeals; see *Lawlor v. Loewe*, above. For other proceedings growing out of this controversy see 139 Fed. 71 (Bul. No. 61, p. 1067); 148 Fed. 924 (Bul. No. 70, p. 710); 208 U. S. 274, 28 Sup. Ct. 301 (Bul. No. 75, p. 622); 187 Fed. 522 (Bul. No. 96, p. 780); see also 130 Fed. 633; 142 Fed. 216.

The facts briefly stated in the present opinion, which was delivered by Mr. Justice Holmes and sustained the judgment of the court of

appeals, appear in greater fullness in the opinion of the court of appeals, given above. The opinion in the present instance is brief, and is reproduced practically in full:

This is an action under the act of July 2, 1890, ch. 647, sec. 7, 26 Stat. 209, 210, for a combination and conspiracy in restraint of commerce among the States, specifically directed against the plaintiffs, (defendants in error,) among others, and effectively carried out with the infliction of great damage. The declaration was held good on demurrer in 208 U. S. 274 [Bul. No. 75, p. 622], where it will be found set forth at length. The case now has been tried, the plaintiffs have got a verdict, and the judgment of the district court has been affirmed by the circuit court of appeals. 209 Fed. Rep. 721; 126 C. C. A. 445 [p. 137, ante].

The grounds for discussion under the statute that were not cut away by the decision upon the demurrer have been narrowed still further since the trial by the case of *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600 [p. 53, ante]. Whatever may be the law otherwise, that case establishes that, irrespective of compulsion or even agreement to observe its intimation, the circulation of a list of "unfair dealers," manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers combined with a view to joint action and in anticipation of such reports, is within the prohibitions of the Sherman Act if it is intended to restrain and restrains commerce among the States.

It requires more than the blindness of justice not to see that many branches of the United Hatters and the Federation of Labor, to both of which the defendants belonged, in pursuance of a plan emanating from headquarters made use of such lists, and of the primary and secondary boycott in their effort to subdue the plaintiffs to their demands. The union label was used and a strike of the plaintiffs' employees was ordered and carried out to the same end, and the purpose to break up the plaintiffs' commerce affected the quality of the acts. (*Loewe v. Lawlor*, 208 U. S. 274, 299 [28 Sup. Ct. 301, Bul. No. 75, p. 622].) We agree with the circuit court of appeals that a combination and conspiracy forbidden by the statute were proved, and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named.

The court in substance instructed the jury that if these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiffs' interstate commerce in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matters within their delegated authority, then such members were jointly liable, and no others. It seems to us that this instruction sufficiently guarded the defendants' rights, and that the defendants got all that they were entitled to ask in not being held chargeable with knowledge as matter of law. It is a tax on credulity to ask anyone to believe that members of labor unions at that time did not know that the primary and secondary boycott and the use of the "We don't patronize" or "Unfair" list were means expected to be employed in the effort to unionize shops. Very possibly they were

thought to be lawful. See *Gompers v. United States*, 233 U. S. 604 [34 Sup. Ct. 693, p. 133, ante]. By the constitution of the United Hatters the directors are to use "all the means in their power" to bring shops "not under our jurisdiction" "into the trade." The by-laws provide a separate fund to be kept for strikes, lockouts, and agitation for the union label. Members are forbidden to sell nonunion hats. The Federation of Labor with which the Hatters were affiliated had organization of labor for one of its objects, helped affiliated unions in trade disputes, and to that end, before the present trouble, had provided in its constitution for prosecuting and had prosecuted many what it called legal boycotts. Their conduct in this and former cases was made public especially among the members in every possible way. If the words of the documents on their face and without explanation did not authorize what was done, the evidence of what was done publicly and habitually showed their meaning and how they were interpreted. The jury could not but find that by the usage of the unions the acts complained of were authorized, and authorized without regard to their interference with commerce among the States. We think it unnecessary to repeat the evidence of the publicity of this particular struggle in the common newspapers and union prints, evidence that made it almost inconceivable that the defendants, all living in the neighborhood of the plaintiffs, did not know what was done in the specific case. If they did not know that, they were bound to know the constitution of their societies, and at least well might be found to have known how the words of those constitutions had been construed in act.

It is suggested that injustice was done by the judge speaking of "proof" that in carrying out the object of the associations unlawful means had been used with their approval. The judge cautioned the jury with special care not to take their view of what had been proved from him, going even farther than he need have gone. (*Graham v. United States*, 231 U. S. 474, 480.) But the context showed plainly that proof was used here in a popular way for evidence and must have been understood in that sense.

Damages accruing since the action began were allowed, but only such as were the consequence of acts done before and constituting part of the cause of action declared on. This was correct. (*New York, Lake Erie & Western R. R. Co. v. Estill*, 147 U. S. 591, 615, 616.) We shall not discuss the objections to evidence separately and in detail as we find no error requiring it. The introduction of newspapers, etc., was proper in large part to show publicity in places and directions where the facts were likely to be brought home to the defendants, and also to prove an intended and detrimental consequence of the principal acts, not to speak of other grounds. The reason given by customers for ceasing to deal with sellers of the Loewe hats, including letters from dealers to Loewe & Co., were admissible. 3 Wigmore, Evidence, sec. 1729 (2). We need not repeat or add to what was said by the circuit court of appeals with regard to evidence of the payment of dues after this suit was begun. And in short neither the argument nor the perusal of the voluminous brief for the plaintiffs in error shows that they suffered any injustice or that there was any error requiring the judgment to be reversed. Judgment affirmed.

LABOR ORGANIZATIONS—CONSPIRACY—TRANSPORTATION OF EXPLOSIVES IN PASSENGER TRAINS IN INTERSTATE COMMERCE—EVIDENCE—*Ryan et al. v. United States, United States Circuit Court of Appeals, Seventh Circuit (June 3, 1914), 216 Federal Reporter, page 13.*—Frank M. Ryan and 29 others were convicted, in the District Court of the United States for the District of Indiana, of conspiracy to commit a crime against the United States, and of transporting, aiding and abetting the transportation of dynamite and nitroglycerin in passenger trains and cars in commerce between the several States of the United States, and brought a writ of error.

From 1905 until 1911 a strike was in force by the International Association of Bridge & Structural Iron Workers against the American Bridge Co. and all concerns affiliated with it. From 1906 on explosives were used to blow up buildings and bridges under construction by the National Erectors' Association and others where the open-shop plan was followed. The number, distribution, and destructiveness of these explosions, and the connection with them of the labor unions mentioned, of which nearly all the plaintiffs in error were officers or members, will be shown in quotations given from the opinion of the circuit court of appeals, which was delivered by Judge Seaman. After stating the substance of the various counts of the indictment, which charge an unlawful transportation of explosives, prohibited by sections 37, 232, et seq., of the Criminal Code, he said:

The charges are, not only necessary but in truth, limited to offenses against the United States, which are alone within Federal cognizance, and if the primary contentions on behalf of all the plaintiffs in error are tenable, as stated by counsel at the outset of their argument for reversal, it is plain that none of the convictions can be upheld.

Under our system of criminal jurisdiction the requirement is elementary that Federal cognizance is strictly limited to violation of the Federal criminal statutes; and offenses against the State, either statutory or common-law, are within the exclusive jurisdiction of the State courts respectively.

After further discussion of the indictment and the objections to it on the part of the plaintiffs in error, Judge Seaman continued:

The authorities concur, as we understand their import, in these definitions of the conspiracy denounced by section 5440, R. S. (as preserved in section 37 of the Criminal Code), namely: That it is distinguishable from the common-law offense of conspiracy, in that it requires for completion and conviction that "one or more of such parties do any act to effect the object of the conspiracy"; that, when so carried forward by any overt act, it constitutes an offense entirely irrespective, either of its success or of the ultimate objects sought to be accomplished by conspiring "to commit any offense against the United States"; that "liability for conspiracy is not taken away by its success, that is, by the accomplishment of the substantive offense at which the conspiracy aims"; and that the

conspiracy so denounced may either intend and be accomplished by one or several acts which complete the offense, or it may be made by the parties a continuing conspiracy for a course of conduct in violation of law to effect its purposes.

Considerable space is then given to a discussion of the nature of the evidence and to the facts presented therein, involving numerous cases of the destruction of property, life also being destroyed, under circumstances showing a fixed plan and the purpose to achieve an apparent end, the whole extending over a series of years, from 1906 to 1911. Following is a summary:

The premises of fact which are settled by the above recitals—laying out of view the far more serious course of crimes which appear in evidence as committed pursuant to the primary conspiracy—may be recapitulated as follows: Executive officers, members, and agents of the International Association of Bridge and Structural Iron Workers, were engaged in a joint undertaking—rightly charged as a conspiracy—to use dynamite, nitroglycerin, and so-called “infernal machines,” in required quantities, at many places in various States, either in succession or simultaneously as planned, through agents not residing in such places. For such use these explosives were provided and stored at various storage places, arranged for the purpose in various States, to be carried by the agents for use as required, in special carrying cases provided for the purpose, to distant places with needful dispatch and secrecy, so that interstate carriage on passenger cars as averred in the counts, was made necessary for use thereof in other places and States as constantly ordered by the conspirators; and all expenses for such explosives and for their storage and carriage as described “were paid out of the funds of the International Association,” and “drawn upon checks signed by the secretary-treasurer, John J. McNamara, and by the president, Frank M. Ryan” (plaintiff in error). In 25 instances proven such interstate carriages were performed by an agent, as averred in the counts respectively, for designated use of the explosives. Furthermore, the twofold fact of conspiracy for use of the explosives, and that the defendants McManigal, both McNamaras and Hockin were conspirators therein is, in substance, conceded in the argument to be established by the evidence; and it is undisputed that the evidence proves the defendant Edwin Clark to be another member of such conspiracy.

These basic facts directly bearing upon the issues are followed up with connecting evidence of the following nature: Written correspondence on the part of many of the plaintiffs in error, both between one and another thereof and with other defendants, inclusive of the above-mentioned conspirators, together with letters from one and another of such conceded conspirators to one of the plaintiffs in error and to other defendants, properly identified, constitute one volume of printed record; and these letters furnish manifold evidence, not only of understanding between the correspondents of the purposes of the primary conspiracy, but many thereof convey information or directions for use of the explosives, while others advise of destruction which has occurred, and each points unerringly not only to the understanding that the agency therein was that of the con-

spirators, but as well to the necessary step in its performance of transporting the explosives held for such use. This line of evidence clearly tends to prove and may well be deemed convincing of the fact of conspiracy on the part of many, if not all, of the correspondents; and many, if not all, of the uses of explosives therein referred to are established by other evidence to have occurred, together with direct evidence of carriage of explosives for such use, as charged.

The president of the association was the plaintiff in error Ryan, and John J. McNamara was its secretary and treasurer, up to his conviction and sentence (for crimes committed in California) in 1911, thus covering the entire period embraced in the present charges. Under its organization provision was made for monthly reports to show all expenditures of association funds and publication thereof in the official journal. On December 13, 1905, Ryan wrote to McNamara, that it was best to discontinue such publication "while this trouble is on," and in February ensuing the official magazine published a notice by the "executive board" of the association that publication of such reports would cease "during our strike" and until further instructions. The last letter in evidence, written by John J. McNamara, April 13, 1911—the day after his arrest and the concurrent arrest of McManigal—may well be mentioned in this connection both for its general bearing and for its statements that "some organization matters must be surrounded with the utmost secrecy," and that, "even after something has been accomplished, experience has proven the least said about it the better"; also a circular, entitled "Important Warning," dated June 16, 1911, signed jointly by plaintiff in error Ryan and by Hockin (who was one of the original plaintiffs in error and the undisputed director of the explosions), and sent to the officers and members of the association, in effect cautioning all members to keep silent on all actions of the officers thereof of which they may have information, in the view that "traitors will be more active than ever at this particular time." The executive board of the association constituted the managing directors of its policy and affairs, and one of their duties was examination and audit of all expenditures for payment out of its funds. President Ryan and several other plaintiffs in error constituted this board and held frequent meetings at the headquarters in Indianapolis (aside from their respective visits to "fields of operation"), throughout the period during which explosives were purchased, stored, and transported as proven, in performance of their various duties and purposes. We do not understand that minutes of their meetings are in evidence showing their action upon any expenditures during this period, nor does it appear whether record of the fact or items was preserved in any form other than the checks therefor; but the fact of payments from such funds of the association (with many of the checks in evidence) for all expenditures involved herein, is established, as recited in the bill of exceptions, together with the fact that checks therefor were signed by Ryan and McNamara. While it is true that Ryan testifies for the defense, in substance, that he signed such checks in blank, leaving them with McNamara for use in payments, and was unacquainted with the items or purpose entering therein when completed, his credibility in such version was for determination by the jury. So the question was plainly presented for their determination, whether Ryan and other

members of the executive board performed their duties in respect of such expenditures and were advised of their purpose, as a just deduction from all circumstances in evidence pertinent to that inquiry. Plainly the absence of direct proof of affirmative action by the board can not foreclose an inference of such action, in the light of the above-mentioned order in reference to expenditures made during the "trouble," together with another official statement of proceedings of the board (produced from a publication in its recognized official organ, "Bridgemen's Magazine" of April, 1910), embracing various matters ruled upon, wherein the published minutes, signed by the secretary-treasurer, conclude as follows:

"The items set forth above do not include all the matters considered by the executive board. It goes without saying that many questions were presented and acted upon that are not deemed of sufficient importance to be recorded in these columns. Such items, however, were of vital interest to the persons directly interested and were of necessity presented to and considered by the executive board."

Many witnesses, who appear to be disinterested, testify to facts and circumstances which tend strongly in support of one and the other class of charges under the indictment, but specific mention of their testimony is not deemed needful. One feature of circumstantial evidence is brought out by the testimony and justly pressed for consideration, as tending to prove the conspiracy in all its phases, namely: That the use of explosives for destruction of property as described embraced exclusively "open-shop concerns" and was continuous and systematic from the commencement of such course up to the time of the above-mentioned arrest of the McNamaras and McManigal, and then ceased throughout the country.

The chief direct testimony in the record, however, is that of the defendant Ortie E. McManigal, which is plainly subject to the challenge of its independent force, by way of proving the charges, under his relations of record and confessed course of criminality, and thus requires special mention and reference, as well, to the extraordinary array of corroborating evidence furnished in support thereof, as an indispensable requisite for its consideration as proof against the plaintiffs in error. His testimony is remarkable, both for its story of wicked conduct in a systematic course of crimes committed by himself, from the time of his alleged employment in 1907 by Herbert S. Hockin (one of the plaintiffs in error, who has withdrawn his writ) to carry out the objects of the conspiracy, down to the time of his arrest at Detroit, April 12, 1911, and for its directness and completeness upon both classes of issue, inclusive of identification of several of the plaintiffs in error as actors in the conspiracy. In each of the 25 transactions of unlawful carriage of explosives charged in these counts, he testified that the explosives were taken by himself from the storage places, and were personally carried on passenger cars in trains as described, for use in destroying property, and were so used by him. In each instance the transactions are set forth with abundant details of date, places and incidents (on direct and cross examination), which afford the utmost of reasonable opportunity to test their verity; and the extent and comprehensiveness of the evidence introduced in corroboration of this testimony impress us to be not only extraordinary, but thorough for all requirements to authorize its submission to the jury, under proper instructions for testing its force

and credibility, upon which no error is assigned. The elements of corroborative evidence are numerous, including records of telegraph, telephone, railroad, and express companies, hotel registers in many places, testimony of trainmen and many other witnesses for identification of the various trips and carriages, letters and many exhibits of explosives and "infernal machines," identified as taken from various storage places disclosed by McManigal and other witnesses.

We are of opinion, therefore, that the general challenge for insufficiency of evidence must be overruled; that support for the charge of conspiracy, to say the least, by no means rests on the testimony of McManigal; and that no error appears in submission of his testimony for consideration by the jury.

The sufficiency of the evidence to charge each individual plaintiff in error with participation in the crime was discussed, and in the case of 25, conviction by the lower court was affirmed, while in the case of 5 a new trial was granted.

LABOR ORGANIZATIONS—PROTECTION OF EMPLOYEES AS MEMBERS—CONSTITUTIONALITY OF STATUTE—*Coppage v. Kansas, Supreme Court of the United States (Jan. 25, 1915), 35 Supreme Court Reporter, page 240.*—The Supreme Court had before it for the determination of constitutionality chapter 222 of the acts of the Kansas Legislature of 1903, secs. 4674, 4675, G. S. 1909. As enacted, the statute was entitled "An act to provide a penalty for coercing or influencing or making demands upon or requirements of employees, servants, laborers, and persons seeking employment." It was declared unlawful for any employer or agent of an employer to require an agreement, either written or verbal, from employees or prospective employees not to join or continue to be members of a labor organization. Violations were declared misdemeanors punishable by fine or imprisonment. T. B. Coppage was a superintendent employed by the St. Louis & San Francisco Railway Co. at Fort Scott, Kans., and about July 1, 1911, requested one Hedges, a switchman who was a member of a labor organization, to sign an agreement to withdraw from the union. Hedges refused to sign the agreement and also to withdraw from the organization, whereupon he was discharged. From a conviction in the trial court Coppage appealed, claiming that the statute in question was unconstitutional. The Supreme Court of Kansas, however, upheld the statute and affirmed the penalty (*State v. Coppage*, 87 Kans. 752, 125 Pac. 8; Bul. No. 112, p. 119). Further appeal was taken to the Supreme Court of the United States, where the judgment of the court below was reversed by a divided court, and the statute declared unconstitutional. A brief dissenting opinion was written by Mr. Justice Holmes, and a more extended one by Mr. Justice Day, Mr. Justice Hughes concurring therein. The prevailing opinion, concurred in by five others, was written by Mr.

Justice Pitney. On account of the great interest of this case, both the prevailing opinion and those written in dissent are here reproduced in practical completeness. Mr. Justice Pitney having cited the law and stated the facts on which the action was based, said:

At the outset, a few words should be said respecting the construction of the act. It uses the term "coerce," and some stress is laid upon this in the opinion of the Kansas Supreme Court. But, on this record, we have nothing to do with any question of actual or implied coercion or duress, such as might overcome the will of the employee by means unlawful without the act. In the case before us, the State court treated the term "coerce" as applying to the mere insistence by the employer, or its agent, upon its right to prescribe terms upon which alone it would consent to a continuance of the relationship of employer and employee. In this sense we must understand the statute to have been construed by the court, for in this sense it was enforced in the present case; there being no finding, nor any evidence to support a finding, that plaintiff in error was guilty in any other sense. There is neither finding nor evidence that the contract of employment was other than a general or indefinite hiring, such as is presumed to be terminable at the will of either party. The evidence shows that it would have been to the advantage of Hedges, from a pecuniary point of view and otherwise, to have been permitted to retain his membership in the union, and at the same time to remain in the employ of the railway company. In particular, it shows (although no reference is made to this in the opinion of the court) that as a member of the union he was entitled to benefits in the nature of insurance to the amount of fifteen hundred dollars, which he would have been obliged to forego if he had ceased to be a member. But, aside from this matter of pecuniary interest, there is nothing to show that Hedges was subjected to the least pressure or influence, or that he was not a free agent, in all respects competent, and at liberty to choose what was best from the standpoint of his own interests. Of course, if plaintiff in error, acting as the representative of the railway company, was otherwise within his legal rights in insisting that Hedges should elect whether to remain in the employ of the company or to retain his membership in the union, that insistence is not rendered unlawful by the fact that the choice involved a pecuniary sacrifice to Hedges. [Cases cited.] And if the right that plaintiff in error exercised is founded upon a constitutional basis it can not be impaired by merely applying to its exercise the term "coercion." We have to deal, therefore, with a statute that, as construed and applied, makes it a criminal offense punishable with fine or imprisonment for an employer or his agent to merely prescribe, as a condition upon which one may secure certain employment or remain in such employment (the employment being terminable at will), that the employee shall enter into an agreement not to become or remain a member of any labor organization while so employed; the employee being subject to no incapacity or disability, but on the contrary free to exercise a voluntary choice.

In *Adair v. United States*, 208 U. S. 161, [28 Sup. Ct. 277, Bul. No. 75, p. 634], this court had to deal with a question not distinguishable in principle from the one now presented.

Mr. Justice Pitney then stated with some fullness the provisions of the Federal statute that was under consideration in the *Adair* case (30 Stat. 424, 428; sec. 10, act of June 1, 1898). This case involved the discharge of a man on account of his membership, though the statute also included a prohibition similar to the Kansas statute as to agreements not to join a labor union. Continuing, Mr. Justice Pitney said:

Unless it is to be overruled, this decision is controlling upon the present controversy; for if Congress is prevented from arbitrary interference with the liberty of contract because of the "due process" provision of the fifth amendment, it is too clear for argument that the States are prevented from the like interference by virtue of the corresponding clause of the fourteenth amendment; and hence if it be unconstitutional for Congress to deprive an employer of liberty or property for threatening an employee with loss of employment or discriminating against him because of his membership in a labor organization, it is unconstitutional for a State to similarly punish an employer for requiring his employee, as a condition of securing or retaining employment, to agree not to become or remain a member of such an organization while so employed.

It is true that, while the statute that was dealt with in the *Adair* case contained a clause substantially identical with the Kansas act now under consideration—a clause making it a misdemeanor for an employer to require an employee or applicant for employment, as a condition of such employment, to agree not to become or remain a member of a labor organization—the conviction was based upon another clause, which related to discharging an employee because of his membership in such an organization; and the decision, naturally, was confined to the case actually presented for decision. In the present case the Kansas Supreme Court sought to distinguish the *Adair* decision upon this ground. The distinction, if any there be, has not previously been recognized as substantial, so far as we have been able to find. The opinion in the *Adair* case, while carefully restricting the decision to the precise matter involved, cited (208 U. S. on p. 175), as the first in order of a number of decisions supporting the conclusion of the court, a case (*People v. Marcus*, 185 N. Y. 257 [77 N. E. 1073, Bul. No. 67, p. 888]), in which the statute denounced as unconstitutional was in substance the counterpart of the one with which we are now dealing.

But, irrespective of whether it has received judicial recognition, is there any real distinction? The constitutional right of the employer to discharge an employee because of his membership in a labor union being granted, can the employer be compelled to resort to this extreme measure? May he not offer to the employee an option, such as was offered in the instant case, to remain in the employment if he will retire from the union; to sever the former relationship only if he prefers the latter? Granted the equal freedom of both parties to the contract of employment, has not each party the right to stipulate upon what terms only he will consent to the inception, or to the continuance, of that relationship? And may he not insist upon an express agreement, instead of leaving the terms of the employment to be implied? Approaching the matter from a somewhat different

standpoint, is the employee's right to be free to join a labor union any more sacred, or more securely founded upon the Constitution, than his right to work for whom he will, or to be idle if he will? And does not the ordinary contract of employment include an insistence by the employer that the employee shall agree, as a condition of the employment, that he will not be idle and will not work for whom he pleases, but will serve his present employer, and him only, so long as the relation between them shall continue? Can the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?

These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will. It follows that this case can not be distinguished from *Adair v. United States*.

The decision in that case was reached as the result of elaborate argument and full consideration. We are now asked, in effect, to overrule it; and in view of the importance of the issue we have reexamined the question from the standpoint of both reason and authority. As a result, we are constrained to reaffirm the doctrine there applied. Neither the doctrine nor this application of it is novel; we will endeavor to restate some of the grounds upon which it rests. The principle is fundamental and vital. Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.

To avoid possible misunderstanding, we should here emphasize, what has been said before, that so far as its title or enacting clause expresses a purpose to deal with coercion, compulsion, duress, or other undue influence, we have no present concern with it, because nothing of that sort is involved in this case. We do not mean to say, therefore, that a State may not properly exert its police power to prevent coercion on the part of employers towards employees, or vice versa. But, in this case, the Kansas court of last resort has held that Coppage, the plaintiff in error, is a criminal punishable with fine or imprisonment under this statute simply and merely because, while acting as the representative of the railroad company and dealing with Hedges, an employee at will and a man of full age and understanding, subject to no restraint or disability, Coppage insisted that Hedges should freely choose whether he would leave the employ of the company or would agree to refrain from associa-

tion with the union while so employed. This construction is, for all purposes of our jurisdiction, conclusive evidence that the State of Kansas intends by this legislation to punish conduct such as that of Coppage, although entirely devoid of any element of coercion, compulsion, duress, or undue influence, just as certainly as it intends to punish coercion and the like. Now, it seems to us clear that a statutory provision which is not a legitimate police regulation can not be made such by being placed in the same act with a police regulation, or by being enacted under a title that declares a purpose which would be a proper object for the exercise of that power. Nor can a State, by designating as "coercion" conduct which is not such in truth, render criminal any normal and essentially innocent exercise of personal liberty or of property rights; for to permit this would deprive the fourteenth amendment of its effective force in this regard. We of course do not intend to attribute to the legislature or the courts of Kansas any improper purpose or any want of candor; but only to emphasize the distinction between the form of the statute and its effect as applied to the present case.

Laying aside, therefore, as immaterial for present purposes, so much of the statute as indicates a purpose to repress coercive practices, what possible relation has the residue of the act to the public health, safety, morals or general welfare? None is suggested, and we are unable to conceive of any. The act, as the construction given to it by the State court shows, is intended to deprive employers of a part of their liberty of contract, to the corresponding advantage of the employed and the upbuilding of the labor organizations. But no attempt is made, or could reasonably be made, to sustain the purpose to strengthen these voluntary organizations, any more than other voluntary associations of persons, as a legitimate object for the exercise of the police power. They are not public institutions, charged by law with public or governmental duties, such as would render the maintenance of their membership a matter of direct concern to the general welfare. If they were, a different question would be presented.

As to the interest of the employed, it is said by the Kansas Supreme Court to be a matter of common knowledge that "employees, as a rule, are not financially able to be as independent in making contracts for the sale of their labor as are employers in making a contract of purchase thereof." No doubt, wherever the right of private property exists, there must and will be inequalities of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances. This applies to all contracts, and not merely to that between employer and employee. But the fourteenth amendment, in declaring that a State shall not "deprive any person of life, liberty or property without due process of law," gives to each of these an equal sanction; it recognizes "liberty" and "property" as coexistent human rights, and debars the States from any unwarranted interference with either.

And since a State may not strike them down directly it is clear that it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view. The police power is broad, and not easily defined,

but it can not be given the wide scope that is here asserted for it, without in effect nullifying the constitutional guaranty.

In our opinion, the fourteenth amendment debar the States from striking down personal liberty or property rights, or materially restricting their normal exercise, excepting so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare. The mere restriction of liberty or of property rights can not of itself be denominated "public welfare," and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the amendment.

It is said in the opinion of the State court that membership in a labor organization does not necessarily affect a man's duty to his employer; that the employer has no right, by virtue of the relation, "to dominate the life nor to interfere with the liberty of the employee in matters that do not lessen or deteriorate the service"; and that "the statute implies that labor unions are lawful and not inimical to the rights of employers." The same view is presented in the brief of counsel for the State, where it is said that membership in a labor organization is the "personal and private affair" of the employee. To this line of argument it is sufficient to say that it can not be judicially declared that membership in such an organization has no relation to a member's duty to his employer; and therefore, if freedom of contract is to be preserved, the employer must be left at liberty to decide for himself whether such membership by his employee is consistent with the satisfactory performance of the duties of the employment.

Of course we do not intend to say, nor to intimate, anything inconsistent with the right of individuals to join labor unions, nor do we question the legitimacy of such organizations so long as they conform to the laws of the land as others are required to do. Conceding the full right of the individual to join the union, he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man, any more than the same individual has a right to join the union without the consent of that organization. Can it be doubted that a labor organization—a voluntary association of workmen—has the inherent and constitutional right to deny membership to any man who will not agree that during such membership he will not accept or retain employment in company with nonunion men? Or that a union man has the constitutional right to decline proffered employment unless the employer will agree not to employ any nonunion man? (In all cases we refer, of course, to agreements made voluntarily, and without coercion or duress as between the parties. And we have no reference to questions of monopoly, or interference with the rights of third parties or the general public. These involve other considerations, respecting which we intend to intimate no opinion. See *Curran v. Galen*, 152 N. Y. 33; 46 N. E. 297 [Bul. No. 11, p. 529]; *Jacobs v. Cohen*, 183 N. Y. 207, 213, 214; 76 N. E. 5 [Bul. No. 64, p. 896]; *Plant v. Woods*, 176 Mass. 492; 57 N. E. 1011 [Bul. No. 31, p. 1294]; *Berry v. Donovan*, 188 Mass. 353; 74 N. E. 603 [Bul. No. 60, p. 702]; *Brennan v. United Hatters*, 73 N. J. Law 729, 738; 65 Atl. 165, 169 [Bul. No. 70, p. 746].) And can

there be one rule of liberty for the labor organization and its members, and a different and more restrictive rule for employers? We think not; and since the relation of employer and employee is a voluntary relation, as clearly as is that between the members of a labor organization, the employer has the same inherent right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance.

When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee.

To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for "It takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct.

So much for the reason of the matter; let us turn again to the adjudicated cases.

The decision in the *Adair* case is in accord with the almost unbroken current of authorities in the State courts. In many States enactments not distinguishable in principle from the one now in question have been passed, but, except in two instances (one, the decision of an inferior court in Ohio, since repudiated; the other, the decision now under review), we are unable to find that they have been judicially enforced. It is not too much to say that such laws have by common consent been treated as unconstitutional, for while many State courts of last resort have adjudged them void, we have found no decision by such a court sustaining legislation of this character, excepting that which is now under review. The single previous instance in which any court has upheld such a statute is *Davis v. State of Ohio* (1893), 30 Cinc. Law Bull. 342; 11 Ohio Dec. Reprint, 894; where the court of common pleas of Hamilton County sustained an act of April 14, 1892, (89 Ohio Laws 269) which declared that any person who coerced or attempted to coerce employees by discharging or threatening to discharge them because of their connection with any lawful labor organi-

zation should be guilty of a misdemeanor and upon conviction fined or imprisoned. We are unable to find that this decision was ever directly reviewed; but in *State of Ohio v. Bateman* (1900), 10 Ohio Dec. 68; 7 Ohio N. P. 487, its authority was repudiated upon the ground that it had been in effect overruled by subsequent decisions of the State supreme court, and the same statute was held unconstitutional.

The right that plaintiff in error is now seeking to maintain was held by the Supreme Court of Kansas, in an earlier case, to be within the protection of the fourteenth amendment and therefore beyond legislative interference. In *Brick Co. v. Perry*, 69 Kan. 297; 26 Pac. 848 [Bul. No. 56, p. 311]; the court had under consideration chapter 120 of the Laws of 1897 (Gen. Stat. 1901, secs. 2425, 2426), which declared it unlawful for any person, company, or corporation, or agent, officer, etc., to prevent employees from joining and belonging to any labor organization, and enacted that any such person, company, or corporation, etc., that coerced or attempted to coerce employees by discharging or threatening to discharge them because of their connection with such labor organization should be deemed guilty of a misdemeanor, and upon conviction subjected to a fine, and should also be liable to the person injured in punitive damages. It was attacked as violative of the fourteenth amendment, and also of the bill of rights of the State constitution. The court held it unconstitutional, saying: "The right to follow any lawful vocation and to make contracts is as completely within the protection of the constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. * * * Every citizen is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and employee are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom, for any reason, he should not desire would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property."

In five other States the courts of last resort have had similar acts under consideration, and in each instance have held them unconstitutional. In *State v. Julow* (1895), 129 Mo. 163; 31 S. W. 781 [Bul. No. 2, p. 206]; the Supreme Court of Missouri dealt with an act (Missouri Laws 1893, p. 187), that forbade employers, on pain of fine or imprisonment, to enter into any agreement with an employee requiring him to withdraw from a labor union or other lawful organization, or to refrain from joining such an organization, or to "by any means attempt to compel or coerce any employee into withdrawal from any lawful organization or society." In *Gillespie v. The People* (1900), 188 Ill. 176; 58 N. E. 1007 [Bul. No. 35, p. 797]; the Supreme Court of Illinois held unconstitutional an act (Hurd's Stat. 1899, p. 844) declaring it criminal for any individual or member of any firm, etc., to prevent or attempt to prevent employees from forming, joining, and belonging to any lawful labor organization, and that any such person "that coerces or attempts to coerce employees by discharging or threatening to discharge them because of their connection with such awful labor organization" should be guilty of a

misdeemeanor. In *State, ex rel. Zillmer v. Kreutzberg* (1902), 114 Wis. 530; 90 N. W. 1098 [Bul. No. 47, p. 938]; the court had under consideration a statute (Wisconsin Laws 1899, ch. 332), which, like the Kansas act now in question, prohibited the employer or his agent from coercing the employee to enter into an agreement not to become a member of a labor organization, as a condition of securing employment or continuing in the employment, and also rendered it unlawful to discharge an employee because of his being a member of any labor organization. The decision related to the latter prohibition, but this was denounced upon able and learned reasoning that has a much wider reach. In *People v. Marcus* [supra] the statute dealt with (N. Y. Laws, 1887, ch. 688), as we have already said, was in substance identical with the Kansas act. These decisions antedated *Adair v. United States*. They proceed upon broad and fundamental reasoning, the same in substance that was adopted by this court in the *Adair* case, and they are cited with approval in the opinion (208 U. S. 175). A like result was reached in *State, ex rel. Smith v. Daniels* (1912), 118 Minn. 155; 136 N. W. 584 [Bul. No. 112, p. 122]; with respect to an act that, like the Kansas statute, forbade an employer to require an employee or person seeking employment, as a condition of such employment, to make an agreement that the employee would not become or remain a member of a labor organization. This was held invalid upon the authority of the *Adair* case. And see *Goldfield Consol. Mines Co. v. Goldfield Miners' Union*, 159 Fed. 500, 513 [Bul. No. 78, p. 586].

Upon both principle and authority, therefore, we are constrained to hold that the Kansas act of March 13, 1903, as construed and applied so as to punish with fine or imprisonment an employer or his agent for merely prescribing, as a condition upon which one may secure employment under or remain in the service of such employer, that the employee shall enter into an agreement not to become or remain a member of any labor organization while so employed, is repugnant to the "due process" clause of the fourteenth amendment, and therefore void.

The dissenting opinion of Mr. Justice Holmes was brief, dependence being had upon earlier expressions of his views rather than upon a present restatement. It is as follows:

I think the judgment should be affirmed. In present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him. *Holden v. Hardy*, 169 U. S. 366, 397 [18 Sup. Ct. 383, Bul. No. 17, p. 625]. *Chicago, Burlington & Quincy R. R. Co. v. McGuire*, 219 U. S. 549, 570 [31 Sup. Ct. 259, Bul. No. 93, p. 644]. If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins. Whether in the long run it is wise for the workingmen to enact legislation of this sort is not my concern, but I am strongly of opinion that there is nothing in the Constitution of the United States to prevent it, and that *Adair v. United States* [supra], and *Lochner v. New York*, 198 U. S. 45 [25 Sup. Ct. 539, Bul. No. 59, p. 340], should be overruled. I have stated my grounds in those cases and think it unnecessary to add others that I think exist. See further *Vegelahan*

v. Guntner, 167 Mass. 92, 104, 108 [44 N. E. 1077, Bul. No. 9, p. 197]; *Plant v. Woods*, 176 Mass. 492, 505 [57 N. E. 1011, Bul. No. 31, p. 1294]. I still entertain the opinions expressed by me in Massachusetts.

In the dissenting opinion of Mr. Justice Day, Mr. Justice Hughes concurring, attention was called to the fact that similar legislation in fourteen other jurisdictions would be invalidated by the decision in the present case. Cases were then cited to support the statement that the right of contract as a part of individual freedom was nevertheless subject to regulation in the interest of the public welfare, the local legislature being the judge of the necessity of such legislation, its enactments "only to be set aside when they involve such palpable abuse of power and lack of reasonableness to accomplish a lawful end that they may be said to be merely arbitrary and capricious, and hence out of place in a Government of laws and not of men, and irreconcilable with the conception of due process of law."

Mr. Justice Day distinguished between the portions of the Federal act under consideration in the *Adair* case, pointing out that the question at that time was declared to be the making it a criminal offense for an employer to discharge an employee from service because of his membership in a labor organization. He was therefore "unable to agree that that case involved or decided the one now at bar." Continuing, Mr. Justice Day said:

There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will. The question now presented is, May an employer, as a condition of present or future employment, require an employee to agree that he will not exercise the privilege of becoming a member of a labor union, should he see fit to do so? In my opinion, the cases are entirely different, and the decision of the questions controlled by different principles. The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinions. Acting within their legal rights, such associations are as legitimate as any organization of citizens formed to promote their common interest. They are organized under the laws of many States, by virtue of express statutes passed for that purpose, and, being legal, and acting within their constitutional rights, the right to join them, as against coercive action to the contrary may be the legitimate subject of protection in the exercise of the police authority of the States. This statute, passed in the exercise of that particular authority called the police power, the limitations of which no court has yet undertaken precisely to define, has for its avowed purpose the protection of the exercise of a legal right, by preventing an employer from depriving the employee of it as a condition of obtaining employment. I see no reason why a State may not, if it chooses, protect this right, as well as other legal rights.

The act under consideration is said to have the effect to deprive employers of a part of their liberty of contract, for the benefit of labor organizations. It is urged that the statute has no object or purpose, express or implied, that has reference to health, safety,

morals, or public welfare, beyond the supposed desirability of leveling inequalities of fortune by depriving him who has property of some part of his "financial independence."

But this argument admits that financial independence is not independence of law or of the authority of the legislature to declare the policy of the State as to matters which have a reasonable relation to the welfare, peace and security of the community.

This court has many times decided that the motives of legislators in the enactment of laws are not the subject of judicial inquiry. Legislators, State and Federal, are entitled to the presumption that their action has been in good faith and because of conditions which they deem proper and sufficient to warrant the action taken.

The act must be taken as an attempt of the legislature to enact a statute which it deemed necessary to the good order and security of society. It imposes a penalty for "coercing or influencing or making demands upon or requirements of employees, servants, laborers, and persons seeking employment." It was in the light of this avowed purpose that the act was interpreted by the Supreme Court of Kansas, the ultimate authority upon the meaning of the terms of the law. Of course, if the act is necessarily arbitrary and therefore unconstitutional, mere declarations of good intent can not save it, but it must be presumed to have been passed by the legislative branch of the State government in good faith, and for the purpose of reaching the desired end. The legislature may have believed, acting upon conditions known to it, that the public welfare would be promoted by the enactment of a statute which should prevent the compulsory exaction of written agreements to forego the acknowledged legal right here involved, as a condition of employment in one's trade or occupation.

It would be impossible to maintain that because one is free to accept or refuse a given employment, or because one may at will employ or refuse to employ another, it follows that the parties have a constitutional right to insert in an agreement of employment any stipulation they choose. They can not put in terms that are against public policy either as it is deemed by the courts to exist at common law or as it may be declared by the legislature as the arbiter within the limits of reason of the public policy of the State. It is no answer to say that the greater includes the less and that because the employer is free to employ, or the employee to refuse employment, they may agree as they please. This matter is easily tested by assuming a contract of employment for a year and the insertion of a condition upon which the right of employment should continue. The choice of such conditions is not to be regarded as wholly unrestricted because the parties may agree or not as they choose. And if the State may prohibit a particular stipulation in an agreement because it is deemed to be opposed in its operation to the security and well-being of the community, it may prohibit it in any agreement whether the employment is for a term or at will. It may prohibit the attempt in any way to bind one to the objectionable undertaking.

Would anyone contend that the State might not prohibit the imposition of conditions which should require an agreement to forego the right on the part of the employee to resort to the courts of the country for redress in the case of disagreement with his employer? While the employee might be discharged in case he brought suit

against an employer if the latter so willed, it by no means follows that he could be required, as a condition of employment, to forego a right so obviously fundamental as the one supposed. It is therefore misleading to say that the right of discharge necessarily embraces the right to impose conditions of employment which shall include the surrender of rights which it is the policy of the State to maintain.

It may be that an employer may be of the opinion that membership of his employees in the National Guard, by enlistment in the militia of the State, may be detrimental to his business. Can it be successfully contended that the State may not, in the public interest, prohibit an agreement to forego such enlistment as against public policy? Would it be beyond a legitimate exercise of the police power to provide that an employee should not be required to agree, as a condition of employment, to forego affiliation with a particular political party, or the support of a particular candidate for office? It seems to me that these questions answer themselves. There is a real and not a fanciful distinction between the exercise of the right to discharge at will and the imposition of a requirement that the employee, as a condition of employment, shall make a particular agreement to forego a legal right. The *agreement* may be, or may be declared to be, against public policy, although the right of discharge remains. When a man is discharged, the employer exercises his right to declare such action necessary because of the exigencies of his business, or as the result of his judgment for other reasons sufficient to himself. When he makes a stipulation of the character here involved essential to future employment, he is not exercising a right to discharge, and may not wish to discharge the employee when, at a subsequent time, the prohibited act is done. What is in fact accomplished, is that the one engaging to work, who may wish to preserve an independent right of action, as a condition of employment, is coerced to the signing of such an agreement against his will, perhaps impelled by the necessities of his situation. The State, within constitutional limitations, is the judge of its own policy and may execute it in the exercise of the legislative authority. This statute reaches not only the employed but as well one seeking employment. The latter may never wish to join a labor union. By signing such agreements as are here involved he is deprived of the right of free choice as to his future conduct, and must choose between employment and the right to act in the future as the exigencies of his situation may demand. It is such contracts, having such effect, that this statute and similar ones seek to prohibit and punish as against the policy of the State.

It is constantly emphasized that the case presented is not one of coercion. But in view of the relative positions of employer and employed, who is to deny that the stipulation here insisted upon and forbidden by the law is essentially coercive. No form of words can strip it of its true character. Whatever our individual opinions may be as to the wisdom of such legislation, we can not put our judgment in place of that of the legislature and refuse to acknowledge the existence of the conditions with which it was dealing. Opinions may differ as to the remedy, but we can not understand upon what ground it can be said that a subject so intimately related to the welfare of society is removed from the legislative power. Wherein is the right of the employer to insert this stipulation in the agreement any more sacred than his right to agree with another

employer in the same trade to keep up prices. He may think it quite as essential to his "financial independence" and so in truth it may be if he alone is to be considered. But it is too late to deny that the legislative power reaches such a case. It would be difficult to select any subject more intimately related to good order and the security of the community than that under consideration—whether one takes the view that labor organizations are advantageous or the reverse. It is certainly as much a matter for legislative consideration and action as contracts in restraint of trade.

It is urged that a labor organization—a voluntary association of workmen—has the constitutional right to deny membership to any man who will not agree that during such membership he will not accept or retain employment in company with nonunion men. And it is asserted that there can not be one rule of liberty for the labor organization and its members and a different and more restrictive rule for employers.

It of course is true, for example, that a church may deny membership to those who unite with other denominations, but it by no means follows that the State may not constitutionally prohibit a railroad company from compelling a workman to agree that he will, or will not, join a particular church. An analogous case,—viewed from the employer's standpoint, would be: Can the State, in the exercise of its legislative power, reach concerted effort of employees intended to coerce the employer as a condition of hiring labor that he shall engage in writing to give up his privilege of association with other employers in legal organizations, corporate or otherwise, having for their object a united effort to promote by legal means that which employers believe to be for the best interest of their business?

I entirely agree that there should be the same rule for employers and employed, and the same liberty of action for each. In my judgment, the law may prohibit coercive attempts, such as are here involved, to deprive either of the free right of exercising privileges which are theirs within the law. So far as I know, no law has undertaken to abridge the right of employers of labor in the exercise of free choice as to what organizations they will form for the promotion of their common interests, or denying to them free right of action in such matters.

But [it] is said that in this case all that was done in effect was to discharge an employee for a cause deemed sufficient to the employer—a right inherent in the personal liberty of the employer protected by the Constitution. This argument loses sight of the real purpose and effect of this and kindred statutes. The penalty imposed is not for the discharge but for the attempt to coerce an unwilling employee to agree to forego the exercise of the legal right involved as a condition of employment. It is the requirement of such agreements which the State declares to be against public policy.

I think that the act now under consideration, and kindred ones, are intended to promote the same liberty of action for the employee as the employer confessedly enjoys. The law should be as zealous to protect the constitutional liberty of the employee as it is to guard that of the employer. A principal object of this statute is to protect the liberty of the citizen to make such lawful affiliations as he may desire with organizations of his choice. It should not be necessary to the protection of the liberty of one citizen that the same right in another citizen be abridged or destroyed.

If one prohibitive condition of the sort here involved may be attached, so may others, until employment can only be had as the result of written stipulations, which shall deprive the employee of the exercise of legal rights which are within the authority of the State to protect. While this court should, within the limitations of the constitutional guaranty, protect the free right of contract, it is not less important that the State be given the right to exert its legislative authority, if it deems best to do so, for the protection of rights which inhere in the privileges of the citizen of every free country.

The Supreme Court of Kansas in sustaining this statute, said that "employees as a rule are not financially able to be as independent in making contracts for the sale of their labor as are employers in making a contract of purchase thereof," and in reply to this it is suggested that the law can not remedy inequalities of fortune, and that so long as the right of property exists, it may happen that parties negotiating may not be equally unhampered by circumstances.

This view of the Kansas court, as to the legitimacy of such considerations, is in entire harmony, as I understand it, with the former decisions of this court in considering the right of State legislatures to enact laws which shall prevent the undue or oppressive exercise of authority in making contracts with employees. Certainly it can be no substantial objection to the exercise of the police power that the legislature has taken into consideration the necessities, the comparative ability, and the relative situation of the contracting parties. While all stand equal before the law, and are alike entitled to its protection, it ought not to be a reasonable objection that one motive which impelled an enactment was to protect those who might otherwise be unable to protect themselves.

I therefore think that the statute of Kansas, sustained by the supreme court of the State, did not go beyond a legitimate exercise of the police power, when it sought, not to require one man to employ another against his will, but to put limitations upon the sacrifice of rights which one man may exact from another as a condition of employment.

LABOR ORGANIZATIONS—STRIKES—INCITING TO INJURY OF PERSONS—*State v. Quinlan, Supreme Court of New Jersey (June 5, 1914), 91 Atlantic Reporter, page 111.*—Patrick Quinlan was convicted in the court of quarter sessions of Passaic County of advocating, encouraging, or inciting the killing or injuring of a class of persons, it being alleged that, at the time of a strike, he uttered in a public meeting the following words: "I make a motion that we go to the silk mills, parade through the streets, and club them out of the mills; no matter how we get them out, we got to get them out." Quinlan took exceptions to the refusal of the trial judge to quash the indictment, one point being as to the sufficiency of the statute under which conviction was had. The statute in question declares guilty of high misdemeanor any person who, in public or private, by speech, writing, or otherwise, advocates, encourages, incites, etc., * * *

the killing or injuring of any class or body of persons, or of any individual.

In its opinion, delivered by Judge Kalisch, the supreme court held that the statute is not in violation of the constitution as being uncertain in describing the offense, saying, "There is no organic law or rule of sound public policy that requires the legislature to define the meaning of English words in common and daily use."

Another contention was that the indictment, in order to charge the offense, must set out that as the result of the utterance of the words alleged there was a killing or injury of a class or body of persons or of an individual. Authorities are quoted to show that this contention is unsound, and the court said in part:

It is germane to the matter under discussion to observe here that the section of the crimes act on which the indictment in the case sub judice is founded is not an innovation upon, but declaratory of, the common law.

Stephen, in his Digest of Criminal Law (Ed. 1877) p. 33, says:

"Every one who incites any person to commit any crime commits a misdemeanor, whether the crime is or is not committed."

The framers of the act had evidently in mind the prevention of breaches of the public peace and the protection of human life and limb, and deemed that these could be best effected by making it a high misdemeanor for any one who shall, in public or private, by speech, etc., or by any other mode and means, advocate, encourage, or incite to such breaches of the law, irrespective of the fact whether such breaches of the law actually took place or not. The gravamen of the statutory offense lies in the incitement or encouragement to the commission of the offenses denounced, and not in the actual commission of them.

As to the admission of remarks made by a speaker just before Quinlan made the motion alleged, the court said:

A reference to Mrs. Jones's remarks shows them to have been of an inflammatory character, but the argument made is that they were irrelevant, incompetent, and immaterial, because the issue before the court and jury was whether the defendant at that time and place uttered the language charged on the indictment. It is further argued that her remarks were not part of the *res gestæ*, since it was not shown that they were made in furtherance of a common design, or that the defendant was in any way concerned in their making. But this objection is fully answered by the language used by the defendant when he rounded out the peroration of Mrs. Jones, as described by the State's witness Tracey. Mrs. Jones said:

"I want you people to go to the mills and I want you people to advise the people to join you in this strike. If they refuse, I want you to go into the mills and I want you to drive them out of the mills. I want you to knock them out of the mills, even if it takes your extreme force."

It was following this that the defendant made the motion in which he used the language set out in the indictment. We think the tes-

timony was properly admitted as a part of the *res gestæ*. It was clearly within the issue, for the defendant was charged with advocating, encouraging, and inciting the injuring of a class of persons, and the testimony tended to show that he was participating with Mrs. Jones in a common design to that end.

The conviction was therefore affirmed.

LABOR ORGANIZATIONS—UNLAWFUL COMBINATIONS—RESTRAINT OF TRADE—INJUNCTION—LIABILITY OF MEMBERS—*Irving et al. v. Neal et al.*, *United States District Court, Southern District of New York* (Nov. 6, 1913), 209 *Federal Reporter*, page 471.—This case arose from a bill in equity brought by Charles R. Irving and Robert Casson, copartners and citizens of Massachusetts, seeking an injunction against Edward H. Neal, individually and as secretary of the joint district council of New York and vicinity of the United Brotherhood of Carpenters and Joiners of America and Amalgamated Society of Carpenters and Joiners of America, and others. The complainant firm had been put on an "unfair list" maintained by the labor organization, and its name was also omitted from the "fair" list distributed to builders, architects, and owners of property using or likely to use woodwork or trim for interior finish of buildings, the complainant company being manufacturers of such material. Strikes were also threatened if the notices in such circulars and letters as were sent were not complied with.

Judge Ward stated the foregoing facts and continued with the opinion of the court in part as follows:

The particular case of a sympathetic strike threatened by the defendant Blumenberg, a business agent of the joint district council at the Cathedral of St. John the Divine in this city, resulted in the issuance of a restraining order and preliminary injunction prohibiting the individual defendants, both individually and officially, from interfering with the complainant's business. The case now comes up on final hearing.

I find that the allegations of the bill as to particular instances in which the purpose of the combination was carried out or sought to be carried out against the complainants are true as matter of fact. The defendants contend that, even if this be so, the bill should be dismissed as without equity against them because they have not individually published "unfair" lists or called or threatened sympathetic strikes, and further because no "unfair" lists have been published or sympathetic strikes called for the past two years. They are, however, members of the United Brotherhood and of the local unions represented by the joint district council and are officers either of the brotherhood or council. Several of them did actually take part in some of the particular instances stated in the bill. At all events, if the thing principally complained of, viz., an agreement not to work on non-union trim enforceable by fine is unlawful, they are liable for anything done to carry it out, even though they did not individually participate.

The agreement is a part of the organic law of the associations of which they are members and officers, and, of course, they can not say they are ignorant of it or do not participate. The admissions of their answer are to the contrary. I think this proposition consistent with the opinion of the circuit court of appeals for this circuit in *Lawlor v. Loewe*, 187 Fed. 522, 109 C. C. A. 288 [Bul. No. 96, p. 780]. So also, assuming that the acts complained of in the bill or some of them have been discontinued, further commission of them may be properly enjoined if they are unlawful.

There can be no question: First, that a combination does exist between the various local unions which constitute the United Brotherhood; second, that one of the purposes of the combination is to compel the unionization of all manufacturing carpenter shops; third, that the object is to restrain competition between open shops and union shops; and, fourth, that this object is to be accomplished principally by an agreement to refuse to work on any job where non-union trim is used. It further appears that an agreement exists between the Master Carpenters' Association, composed of the principal employers of carpenters in Greater New York, and the joint district council, whereby the builders agree to use only union trim, which I think the builders were coerced into making by the unions. The effect of it is that nonunion trim, except of negligible sizes, can not be sold throughout almost the whole of that territory.

It is said that workmen have a right to refuse to work for any reason they choose, good or bad, which is satisfactory to themselves. This is true, but it does not follow that they have a right to combine to do so some 200,000 strong over the whole country. Doubtless the purpose of the combination is to advance their own interests without actual malice against manufacturers who do not wish to operate their mills in accordance with the requirements of the unions. This, however, is true of almost every combination in restraint of trade. The combination in this case results all the same in directly restraining competition between manufacturers.

The precise question of law to be determined is whether this feature of the combination, there being no right of action at common law, is made unlawful by, and may be enjoined under, any statute.

I think it is shown to be unlawful under the Sherman law by the decision of the Supreme Court in *Loewe v. Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301 [Bul. No. 75, p. 622].

But because the Sherman law prescribes the remedies, both criminal and civil, at law and in equity, it is held in this circuit that only the prescribed remedies can be pursued. From this it follows that the injunctive relief can only be had at the instance of the Government, and therefore that the complainants can not recover. *National Fireproofing Co. v. Mason Builders' Ass'n*, 169 Fed. 259, 94 C. C. A. 535 [Bul. No. 84, p. 427].

Section 340 of the general business law of this State (Consol. Laws 1909, c. 20) makes any combination, whereby competition in the supply or the price of any article in common use in the State is restrained, a misdemeanor. Interior trim such as the complainants manufacture is such an article; but, as the law confers the remedy by injunction on the State and elaborately prescribes the procedure, I am bound to follow the suggestion made in the *National Fireproofing*

case, *supra*, that under this act also injunctive relief can be had only at the suit of the State.

Section 580 of the penal law of this State, subd. 6, makes it a misdemeanor for two or more persons to conspire to commit any act "injurious to trade or commerce." Without discussing the multitude of decisions cited by counsel, the reasoning in the case of *Loewe v. Lawlor*, *supra*, seems to me enough to show that the combination in this case is such an act. See, also, *People v. McFarlin*, 43 Misc. Rep. 591, 89 N. Y. Supp. 527. As the act says nothing whatever about civil remedies, I think any appropriate remedy is available to one especially injured by violation of it.

While there is no evidence of a special hostility to the complainants in particular, as maintaining an open shop, the proofs show a persistent campaign has been made by the combination to compel them to unionize their shop. They suffer in a way different from the community at large. This entitles them to all available civil remedies, among others to injunctive relief. A decree will be entered granting a permanent injunction in accordance with this opinion.

LABOR ORGANIZATIONS—UNLAWFUL COMBINATIONS—RESTRAINT OF TRADE—INJUNCTION—PREVENTION OF COMPETITION—*Paine Lumber Co. (Ltd.), v. Neal et al.*, *United States District Court, Southern District of New York (Nov., 1913)*, 212 *Federal Reporter*, page 259.—This case is closely connected with that of *Irving et al. v. Neal et al.*, 209 Fed. 471 [see p. 162], as it arose out of the same labor conditions. This bill in equity was brought by 8 complainants, residents of States other than New York, and manufacturers of wood trim, sash, and similar wood products. As to differences between the two suits, the opinion, delivered by Judge Mayer, said:

Here both the complaint and the relief sought are more comprehensive. There is no question involving an existing strike. The record is barren of any proof of acts of violence, nor is there satisfactory proof that the agreements and acts complained of were, at the time of the commencement of the suit, directed against these particular complainants. Plainly and briefly stated, the suit is brought on behalf of nonunion manufacturers to settle in a private litigation an economic question of ceaseless importance in respect of which in the particular trade here involved there has been a long and bitterly (though peacefully) fought struggle; each side contending for what it believed to be its rights and welfare.

The defendants named in this bill consist of officers of the United Brotherhood of Carpenters and Joiners of America, who were also officers or agents of the joint district council; union manufacturers of floor, sash, and trim in New York; and master carpenters whose business it is to install trim, doors, sash, and other woodwork in buildings. Agreements between the master carpenters and the joint district council, and between the Manufacturing Woodworkers'

Association and the joint district council are set forth in the bill, an injunction being sought to prevent these agreements from being carried into effect.

After stating the allegations as to acts alleged to have been done in pursuance of the conspiracy the opinion continues:

The testimony is voluminous, but I think the essential facts may be summarized as follows: (1) The journeymen carpenters in the Borough of Manhattan and in parts of the Borough of Brooklyn very generally belong to the Brotherhood of Carpenters. (2) Owing to the fact that members of the brotherhood refuse to work with non-union members and to the further fact that employers in the building trades deem it wise to employ brotherhood men, it is difficult and under ordinary circumstances impracticable to erect carpenter work in the Borough of Manhattan and in parts of the Borough of Brooklyn except with union labor. (3) That the Brotherhood of Carpenters has a by-law that its members will not erect material made by non-union mechanics. (4) The Brotherhood of Carpenters has given notice that its men will abide by this by-law. (5) The by-law is enforceable by fine. (6) On several occasions in the past few years the members of the brotherhood have quit work where complainants' products were being used and where the products of other so-called nonunion mills were being used. (7) The enforcement of the by-law in question by the Brotherhood of Carpenters and the provision in the agreement with the master carpenters relative to the use of non-union trim have lessened the sale of complainants' products in the Borough of Manhattan and in some parts of the Borough of Brooklyn. (8) The workmen have adopted and pursued the policy complained of to better their condition in a continuing economic struggle with no malice to the particular complainants herein, but as part of a plan to accomplish a nation-wide unionization of their trade. (9) The contractors or master carpenters have entered into their trade agreements after elaborate negotiation and for the purpose of establishing and maintaining peaceful relation which shall obviate strikes and other disturbing labor troubles.

For the complainants to succeed they must establish: (1) An agreement offensive to the common law or a State or Federal statute; (2) or any acts done in pursuance thereof; and (3) such injury as will warrant injunctive relief in a litigation between private parties.

Assuming the agreement and its operation to be a combination in restraint of trade, the common law gives no right of action to a third person.

The remedy, if any, must therefore be found in statutes which, as I understand the trend of modern decisions, are said to be declaratory of the common law but afford new or additional remedies. This brings us to a consideration of the Federal so-called Sherman anti-trust law and the New York State antitrust law (General Business Law, sec. 340). I agree with Judge Ward in his opinion filed contemporaneously herewith [*Irving v. Neal*, *supra*] that:

"There can be no question, first, that a combination does exist between the various local unions which constitute the United Brotherhood; second, that one of the purposes of the combination is to compel the unionization of all manufacturing carpenter shops; third, that

the object is to restrain competition between open shops and union shops; and, fourth, that this object is to be accomplished principally by an agreement to refuse to work on any job where nonunion trim is used."

I further agree that the combination in the case before him results in directly restraining competition between manufacturers and operates to restrain interstate commerce in violation of the above-referred-to Federal and State statutes.

As the agreement between the joint district council and the master carpenters and the agreement between the Manufacturing Woodworkers' Association and the United Brotherhood and the joint district council are but steps in the course of the combination and effective extensions of its purpose and results, I am of the opinion that these agreements are also condemned by the two statutes referred to—and this irrespective of the motives which actuated any of the defendants, masters, or workmen.

But injunctive relief may be had under either statute only at the instance of the United States or the State of New York, as the case may be, and therefore complainants can not recover in this suit. *Nat. Fireproofing Co. v. Mason Builders' Ass'n* [169 Fed. 259; Bul. No. 84, p. 427].

As I can not agree with the contention of the counsel for complainants that either subdivision 5 of section 580 or section 530 of the Penal Law is applicable to the case at bar, there thus remains for consideration only subdivision 6 of section 580 of the Penal Law of New York. Subdivision 6 of section 580 of article 54 of the Penal Law (formerly section 168, subd. 6, of Penal Code) has long been on the statute book. It provides:

"If two or more persons conspire to commit any act injurious * * * to trade or commerce * * * each of them is guilty of misdemeanor" (formerly part of section 168 of the Penal Code).

The prevention of competition in business has been held to be an act injurious to trade in contemplation of law. *Kellogg v. Sowerby*, 190 N. Y. 370, 83 N. E. 47; *People, etc., v. Sheldon*, 139 N. Y. 251, 34 N. E. 785.

It is further held by the New York Court of Appeals:

"A civil action is maintainable by one who suffers injury as the result of a conspiracy forbidden by the criminal law to recover the damages which he has sustained at the hands of the parties to the combination."

See, also, *In re Debs*, 158 U. S. at page 593, 15 Sup. Ct. 900.

Under this statute the motive of the parties is immaterial. The gist of the offense is the agreement to prevent competition.

But before a private litigant may recover he must show either that he has suffered special injury as the proximate result of the wrong or that the conspiracy was directed against him. *Cranford v. Tyrrell*, 128 N. Y. 341, 28 N. E. 514.

So, here, it is true that the complainants may be injured by the general situation; but theirs is not a special injury in the sense of *Cranford v. Tyrrell*, supra, nor of the *Irving* case. Assuming, for the purpose of illustration, the agreement complained of to be unlawful, it was impersonal and intended to accomplish a general result

as distinguished from selecting these particular complainants as the object of its operation. *National Fireproofing Co. v. Mason Builders' Ass'n*, supra.

In such circumstances the policy of the lawmaking power (here, Congress and the New York Legislature) seems to be to remit these problems to the responsible and duly selected public officials. A decree in a litigation at the instance of the Government or the State is binding universally to all practical intents and purposes. It is presumably in the public interest as distinguished from any individual interest and operates for the benefit of all (as distinguished from meeting a particular instance of wrong or injury) on a method or manner of conducting business whether the complaint be against employer or employee.

Of the many cases cited I find none authoritative where a general business situation in the case of employers or a general trade situation in the case of employees was corrected by injunction at the instance of private suitors. Ample remedy is provided at common law or by statute for recovery of money damage in actions by private litigants. The courts have time and again extended the equity arm to prevent the commission or continuance of injury directed against particular persons and have protected employers against violence and sympathetic strikes; but where the purpose of an injunction is, as in the case at bar, to attempt to control a large body of men generally to work or not to work on a class of goods or in a kind of manufacture (as distinguished from a specific instance or instances as above discussed), the remedy of injunction is not to be granted in a litigation between private parties.

Finally, it may be remarked that, in any event, on this branch of the case, the complaint does not seek an injunction against the master carpenters nor does the proof justify the granting thereof.

MECHANICS' LIENS—CONSTITUTIONALTY OF STATUTE—INTERFERENCE WITH RIGHT TO CONTRACT—*Rittenhouse & Embree Co. v. William Wrigley, jr., Co.*, *Supreme Court of Illinois* (June 16, 1914), 105 *North-eastern Reporter*, page 743.—This case involved the constitutionality of the Illinois statute, Laws of 1903, page 238, section 21, providing that every mechanic or other person who shall furnish any labor or material for any contractor shall be known as a subcontractor and have a lien the same as a contractor, whether or not the contractor could have obtained a lien or was by contract or conduct divested of the right to a lien. The court held that this statute is unconstitutional as depriving the owner of the right to contract, in a manner not within the police power of the State, in so far as it gives a right to a lien where the original contractor has waived his right to lien before any labor was performed or materials furnished, following its previous opinion in the case of *Kelly v. Johnson*, 251 Ill. 135, 95 N. E. 1068 (Bul. No. 98, p. 484).

MECHANICS' LIENS—LIENS OF SUBCONTRACTORS—ATTORNEYS' FEES—CONSTITUTIONALITY OF STATUTE—*Becker v. Hopper, Supreme Court of Wyoming (Jan. 27, 1914), 138 Pacific Reporter, page 179.*—This was an action to recover the value of materials furnished in the construction of a building, the contract not having been made with the owner of the building but with his contractor. The statute of Wyoming, section 3799, Compiled Statutes of 1910, gives the subcontractor a right to a mechanic's lien, though there is no direct contractual relation with the owner of the property. It was contended that this was unconstitutional, which contention was rejected by the court, Judge Beard, who delivered the opinion, saying:

We are content to follow the decisions of the courts of last resort in a large majority of the States where the question has been decided, holding that such statutes, giving subcontractors a lien for labor and materials actually entering into the structure, do not violate constitutional provisions, and are valid. The question was fully and carefully considered by the circuit court of appeals, sixth circuit, in *Jones v. Great Southern Fireproof Hotel Co.*, 86 Fed. 370, 30 C. C. A. 108, in an elaborate opinion by Judge Lurton, in which many cases are reviewed, and that decision was affirmed by the Supreme Court of the United States. *Great Southern Hotel Co. v. Jones*, 193 U. S. 532, 24 Sup. Ct. 576, 48 L. Ed. 778, in the footnote to which case many additional cases are cited.

Another question of constitutionality was raised with reference to a provision of the statute awarding attorneys' fees to the plaintiff or complainant if he shall obtain a judgment or decree, no reciprocal benefit being allowed a successful defendant. As to this the court said in part:

The decisions are not uniform on this question. In some of the States similar statutes have been held valid, and in other invalid, as violative of the Constitution of the United States, which guarantees to every person "the equal protection of the law"; and the provisions of State constitutions that all laws of a general nature shall have a uniform operation, and that no special law shall be enacted when a general law can be made applicable. The decision most frequently referred to and cited in support of the decisions holding such statutes unconstitutional is *Gulf, etc., Co. v. Ellis*, 165 U. S. 150, 17 Sup. Ct. 255 [Bul. No. 11, p. 504], holding invalid a statute of Texas allowing attorney's fees to any person having a bona fide claim against a railroad company for services, or for damages for stock killed.

The opinion then cited *Davidson v. Jennings*, 27 Colo. 187, 60 Pac. 354, and *Mills v. Olsen*, 43 Mont. 129, 115 Pac. 33, in which similar provisions were held unconstitutional, and said:

The reasoning in those cases, supported as it is by the authorities therein cited, appears to us to be sound, and not shaken by the decisions holding the contrary. We are impelled to the conclusion that the statute awarding attorney's fees in this class of cases is unconstitutional and void.

The judgment in the plaintiff's favor was therefore modified and affirmed.

MECHANICS' LIENS—MATERIALMEN—EFFECT OF STIPULATION BY CONTRACTOR—*Hume v. Seattle Dock Co. et al.*, *Supreme Court of Oregon* (Jan. 6, 1914), *137 Pacific Reporter*, page 752.—R. A. Hume filed a lien on the Chamber of Commerce Building owned by the dock company, for the amount due him on material he had furnished a contractor for making cement blocks and tile for use in fireproofing the building. The company contended that Hume had no right of lien, as its contract with the principal contractor contained a stipulation that no mechanics' liens should be filed. Hume obtained a judgment in the circuit court of Multnomah County, Oreg., and this judgment was affirmed by the supreme court of the State, on appeal. Judge Eakin, in referring to the contention of the dock company, said:

There is a great conflict in the cases, accounted for in most instances by the difference in the relative statutes. Where there is a covenant in the contract against liens or an express stipulation that liens shall not be filed, the courts of a great many of the States hold that such stipulation will not bind the laborer, materialman, or subcontractor unless he has assented to it. [Cases cited.]

But, on the other hand, a few States follow the holding in Pennsylvania, as stated in *Schroeder v. Galland et al.*, 134 Pa. 277, 19 Atl. 632 [since modified by statute], it being held that a mechanic's lien can not be filed by a subcontractor for work or material furnished by him toward the erection of the building, and that the only connection between the owner and the subcontractor is through and by means of the contract between the owner and the contractor, so that the subcontractor is chargeable with notice of all its terms and stipulations and is bound thereby. By this rule the laborer is not consulted, and he must accept the work under the conditions of the original contract, in the making of which he had no voice. It was to protect the workman against such conditions that our lien law was enacted. A lien is not given through the contractor by subrogation but is a direct and independent lien to each claimant against the property. Therefore we conclude that the materialman or laborer, to be bound by the stipulation in the original contract against liens, must have assented thereto, or at least notice of that condition must be brought home to him, which was not done in this case.

The dock company also took the position that the sand and cement furnished by Hume, from which the cement blocks and tile were constructed, were not lienable. In disposing of this contention, Judge Eakin said:

The question is whether material furnished to the MacIte Fire-Proofing Company at its factory for the purpose of manufacturing blocks and tile for use in the construction of the Chamber of Commerce Building was lienable. The appealing defendant contends that raw material used to manufacture a commercial article is not lienable, and also that the identity of the material is lost. We understand the rule to be that the lienability of the material does not

depend on its suitability in its crude condition for use in construction of the building or on its identity being maintained, but whether it was furnished especially for the manufacture of something to be used in such structure. Of course crude material for the manufacture of an article for the market generally without reference to any particular structure would not be lienable against the building in which it was used. We think that the material furnished by the plaintiff in this case was lienable.

MINE REGULATIONS—CONSTITUTIONALITY OF STATUTE—STATUS OF STATUTORY COMMISSION—*Plymouth Coal Co. v. Pennsylvania, Supreme Court of the United States (Feb. 24, 1914), 34 Supreme Court Reporter, page 359.*—An act of the State of Pennsylvania, section 10 of article 3, act of June 2, 1891, requires owners of adjoining coal properties to leave a pillar or boundary of coal between their properties of a sufficient thickness to secure the safety of the employees of one party in case the other abandons his workings. The necessity for such a barrier and its dimensions are to be determined by a commission or board consisting of the engineers of the adjoining property owners and the mine inspector of the district. The inspector of mines in Luzerne County requested by letter that the Plymouth Coal Co. have its engineer meet the engineer of a company owning adjacent property in his office at a time set, to decide as to the thickness of the barrier pillar to be left between the properties of the two companies. This the Plymouth company declined to do, whereupon proceedings were had and an injunction issued requiring a barrier pillar at least 70 feet wide to be left, subject, however, to subsequent proceedings as to the necessity for such a pillar on findings by the engineers of the respective companies and the inspector of the district. The company's contentions were that the law violated the "due process" clause of the fourteenth amendment to the Federal Constitution, the provision of the statute being "so crude, uncertain, and unjust as to constitute a taking of property without due process of law."

Mr. Justice Pitney, who delivered the opinion of the court, first declared that the police power of the State reached to the dangerous business of mining coal, citing a number of cases. The opinion of the court below was quoted from at some length, showing the construction put upon the law in question by the State courts, the conclusion being that such a pillar must be left unless the persons authorized to decide the question as a tribunal of experts should determine that none is needed. The case of *Kern v. Delano*, 235 Pa. 478, 84 Atl. 452, was also cited as presenting the view of the supreme court of the State as to the exclusive nature of the jurisdiction of this board, the court saying that even the action of one property

owner in removing the coal from its mine up to the boundary line could not deprive the statutory tribunal of its authority, or confer jurisdiction upon a court of equity to determine the width of the boundary barrier. Proceeding, Mr. Justice Pitney said:

The legislature has not defined with precision the width of the pillar, and it is very properly admitted that, in the nature of things, this would have been impossible, because the width necessary in each case must be determined with reference to the situation of the particular property. From this it necessarily results that it was competent for the legislature to lay down a general rule, and then establish an administrative tribunal with authority to fix the precise width or thickness of pillar that will suit the necessities of the particular situation, and constitute a compliance with the general rule. Administrative bodies with authority not essentially different are a recognized governmental institution. Commissions for the regulation of public service corporations are a familiar instance.

It is to be presumed, until the contrary appears, that the administrative body would have acted with reasonable regard to the property rights of plaintiff in error; and certainly if there had been any arbitrary exercise of its powers its determination would have been subject to judicial review.

It is further objected that the statute provides for no appeal from the determination of the tribunal. But in such cases the right of appeal on other than constitutional grounds may be conferred or withheld, at the discretion of the legislature. As already pointed out, an appeal on fundamental grounds in this instance seems to inhere in the very practice prescribed by the statute for the enforcement of the determination of the statutory tribunal. Were this not expressed in the act, it would none the less be implied, at least so far as pertains to any violation of rights guaranteed by the fourteenth amendment.

MINE REGULATIONS—WEIGHING COAL—CONSTITUTIONALITY OF STATUTE—*Rail & River Coal Co. v. Yaple et al.*, *United States District Court, Northern District of Ohio* (May 20, 1914), 214 *Federal Reporter*, page 273.—The coal company named brought action against the defendants, constituting the Industrial Commission of Ohio, for an injunction to restrain them from enforcing the provisions of the Ohio law of February 5, 1914 (104 Ohio Laws, p. 181), entitled "An act to regulate the weighing of coal at the mines." The act provides that the miners shall be paid for the total weight contained in the cars sent out by them, but that the amount of impurities shall not exceed a percentage to be determined by the industrial commission. The court denied the injunction and sustained the constitutionality of the law in an opinion from which the following is quoted:

The State constitution was amended by adding to article 2 the following sections:

"SEC. 34. Laws may be passed fixing and regulating hours of labor, establishing a minimum wage, and providing for the comfort,

health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

"SEC. 36. Laws may be passed * * * to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and other minerals."

Without determining the soundness of the argument that the act, indirectly at least, establishes a minimum wage, in that it insures the miner full pay for all coal mined in accordance with the prescribed regulation, it may not be said that, in supplying an incentive for more effectually securing the removal of fine coal and coal dust to the surface, and thereby minimizing or dissipating the danger arising from their continued presence in the mines, the act does not provide for the health, safety, and general welfare of employees.

The Ohio act does not restrict the right of contracting for the labor of miners by the day, week, month, or year, or in any other manner (except as to quantity) that the operator may deem proper. If the miner or loader by the terms of his employment is to be paid by the ton or other weight, the right of contract is then curtailed to the extent that he shall be paid according to the total weight of the coal contained in the mine car, such contents to include, however, no greater percentage of slate, sulphur, rock, dirt, or other impurities than is unavoidable, as determined by the industrial commission. It must be presumed that the industrial commission will perform its official duty and fix a standard which will exclude all slate, sulphur, rock, dirt, or other impurities, except such as is unavoidable. The operator, if given the unrestricted right of contract, could do no more. If dissatisfied with the commission's order, which by statute is made *prima facie* reasonable and lawful, he may petition for and obtain a hearing before the commission as to those features, and may thereafter have a speedy review of its action by the supreme court of the State.

MINIMUM WAGES—CONSTITUTIONALITY OF STATUTE—*Simpson v. O'Hara et al.*, *Supreme Court of Oregon* (April 28, 1914), 141 *Pacific Reporter*, page 158.—This action was brought to test the constitutionality of the Oregon minimum wage law. As to the one question presented in addition to those in the case of *Stettler v. O'Hara et al.* [see p. 173], Judge McBride, who delivered the opinion of the court, said:

It is suggested on this appeal that in the case of *Stettler v. O'Hara* this court did not pass upon the contention raised in the pleadings, and upon the argument, that the minimum wage act is inimical to that portion of section 1 of the fourteenth amendment to the Constitution of the United States which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Having determined in the preceding case that the police power of the State legitimately extended to the right to prevent the employment of women and children for unreasonably long hours or at unreasonably small wages, and that the State had the right to use the machinery of a commission to determine to the extent stated in the opinion the length of time and at what wages such persons might be

employed, it would seem to follow as a natural corollary that the right to labor for such hours and at such wages as would reasonably seem to be detrimental to the health or welfare of the community is not a privilege or immunity of any citizen. Local self-government lies at the very foundation of freedom, and the private and local affairs of a community are sacred from the interference of the central power, unless oppressive and unreasonable encroachment on the liberties of the citizen renders such interference imperatively necessary, and such is not the case here.

MINIMUM WAGES—INDUSTRIAL WELFARE COMMISSION—POWERS OF COMMISSION—CONSTITUTIONALITY OF STATUTE—*Stettler v. O' Hara et al., Industrial Welfare Commission, Supreme Court of Oregon (Mar. 17, 1914), 139 Pacific Reporter, page 743.*—Frank O. Stettler brought suit against the members of the Industrial Welfare Commission of Oregon to vacate and annul an order of the commission and enjoin its enforcement. The constitutionality of Laws of 1913, page 92 (ch. 62), was brought in question by this action. The provisions of the act and the facts in the case are stated by the court as follows:

On February 17, 1913, the legislative assembly passed an act entitled "To protect the lives and health and morals of women and minor workers, and to establish an industrial welfare commission and define its powers and duties, and to provide for the fixing of minimum wages and maximum hours and standard conditions of labor for such workers, and to provide penalties for violation of this act." The title is followed by a declaration of the evils that it is desired to remedy, as follows: "Whereas, the welfare of the State of Oregon requires that women and minors should be protected from conditions of labor which have a pernicious effect on their health and morals, and inadequate wages and unduly long hours and unsanitary conditions of labor have such a pernicious effect; therefore, be it enacted by the people of the State of Oregon." The first section provides: "It shall be unlawful to employ women or minors in any occupation within the State of Oregon for unreasonably long hours; and it shall be unlawful to employ women or minors in any occupation within the State of Oregon under any such surroundings or conditions—sanitary or otherwise—as may be detrimental to their health or morals; and it shall be unlawful to employ women in any occupation within the State of Oregon for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the State of Oregon for unreasonably low wages." Then follows the creation of the commission under the name of "Industrial Welfare Commission," to be appointed by the governor, and provisions defining its duties.

Among its duties are those of ascertaining and declaring, in a manner prescribed by the statute, standards of employment for women and children, including rates of wages, hours of labor, and sanitary and other conditions such as may affect health or morals. From the matters so determined by the commission, there may be no appeal on

any question of fact, but there is a right of appeal from the commission to the circuit court from any ruling or holding on a question of law included or embodied in any decision or order by the commission, and from the circuit court to the supreme court.

In due course, the commission made the following order:

The Industrial Welfare Commission of the State of Oregon hereby orders that no person, firm, corporation, or association owning or operating any manufacturing establishment in the city of Portland, Oregon, shall employ any woman in said establishment for more than nine hours a day, or fifty hours a week; or fix, allow, or permit for any woman employee in said establishment a noon lunch period of less than forty-five minutes in length; or employ any experienced adult woman worker, paid by time rates of payment, in said establishment at a weekly wage of less than \$8.64, any lesser amount being hereby declared inadequate to supply the necessary cost of living to such woman factory workers, and to maintain them in health.

The amended complaint sets out all these matters in greater detail, to which the commission replied by way of demurrer on various grounds, the first of which raises the questions here discussed, namely: That "it does not state facts showing that the act or order complained of is an unreasonable exercise of the police power of the State." The demurrer was sustained, and the plaintiff elected to stand on the amended complaint without other facts being adduced. Judgment was rendered dismissing the suit, and the plaintiff appealed.

In its opinion, written by Judge Eakin, and upholding the constitutionality of the law, the court states that the purpose of the suit is to have determined judicially whether the regulation by the legislature of the hours of labor during which women may be employed in any mechanical or manufacturing establishment, mercantile occupation, or other employment requiring continuous physical labor, or the establishment of a minimum wage to be paid therefor is in violation of the State or Federal Constitution, some of the features of these questions being practically new to the courts of this country. Cases on both sides were considered at length, and it was conceded that the fourteenth amendment to the Federal Constitution is a bar to such legislation if it can not be justified as a police measure; and it was assumed that provisions enacted by the State under its police power that have for their purpose the protection or betterment of the public health, morals, peace, and welfare, and reasonably tend to that end, are within the power of the State, notwithstanding they may apparently conflict with the fourteenth amendment to the Federal Constitution. The principal question for decision therefore was whether the provisions of the act are within the police power of the State.

It appeared from the cases cited that statutes having for their purpose provision for maximum hours of labor for employees upon

public works, maximum hours for women and children employed in mechanical, mercantile, or manufacturing establishments, maximum hours for laborers in mines or smelters, and the fixing of minimum wages for laborers upon public works were constitutional, the court saying that the last is so held in *Malette v. Spokane*, 137 Pac. 500 (see p. 191), even where the expense is borne by private individuals, so that the only question for decision here is as to the power of the legislature to fix the minimum wage in such a case. Continuing the court said:

In speaking of the Oregon 10-hour law, Chief Justice Bean, in the case of *State v. Muller* [48 Oreg. 252, 85 Pac. 855, see Bul. No. 67, p. 877], says: "Such legislation must be taken as expressing the belief of the legislature, and through it of the people, that the labor of females in such establishments in excess of 10 hours in any one day is detrimental to health, and injuriously affects the public welfare. The only question for the court is whether such a regulation or limitation has any real or substantial relation to the object sought to be accomplished, or whether it is 'so utterly unreasonable and extravagant' as to amount to a mere arbitrary interference with the right to contract. On this question we are not without authority."

These are some of the grounds upon which maximum 10-hour laws are sustained, and we have cited them here as applying with equal force to sustain the women's minimum wage law, and as bringing it within the police power of the legislature. The State should be as zealous of the morals of its citizens as of their health. The "whereas clause" quoted above is a statement of the facts or conclusions constituting the necessity for the enactment, and the act proceeds to make provision to remedy these causes. "Common belief" and "common knowledge" are sufficient to make it palpable and beyond doubt that the employment of female labor as it has been conducted is highly detrimental to public morals, and has a strong tendency to corrupt them. The Legislature of the State of Massachusetts appointed a commission known as the commission of minimum wage boards to investigate conditions. In the report of that commission in January, 1912, it is said: "Women in general are working because of dire necessity, and in most cases the combined income of the family is not more than adequate to meet the family's cost of living. In these cases it is not optional with the woman to decline low-paid employment. Every dollar added to the family income is needed to lighten the burden which the rest are carrying. * * * Wherever the wages of such a woman are less than the cost of living and the reasonable provision for maintaining the worker in health, the industry employing her is in receipt of the working energy of a human being at less than its cost, and to that extent is parasitic. The balance must be made up in some way. It is generally paid by the industry employing the father. It is sometimes paid in part by future inefficiency on the part of the worker herself, and by her children, and perhaps in part ultimately by charity and the State. * * * If an industry is permanently dependent for its existence on underpaid labor, its value to the Commonwealth is questionable." With this common belief, of which Mr. Justice Harlan says "we take judicial notice," the court can not say, beyond all question, that the act is a plain, palpable invasion of rights secured by the fundamental law, and has no real or substan-

tial relation to the protection of public health, the public morals, or public welfare. Every argument put forward to sustain the maximum hours law, or upon which it was established, applies equally in favor of the constitutionality of the minimum wage law as also within the police power of the State and as a regulation tending to guard the public morals and the public health.

Plaintiff, by his complaint, questions the law also as a violation of section 20 of article 1 of the constitution of Oregon. As we understand this contention, it is that the order applies to manufacturing establishments in Portland alone, that other persons in the same business in other localities are unaffected by it, and that it is discriminatory. The law by which plaintiff is bound is contained in section 1 of the act quoted above. If he will, he can comply with this provision without any action by the commission, and it applies to all the State alike. The other provisions of the act are for the purpose of ascertaining for those who are not complying with it what are reasonable hours of labor, and what is a reasonable wage, in the various occupations and localities in the State to govern in the application of section 1 of the act, and for the purpose of fixing penalties for violations thereof. Counsel seems to consider the order of the commission as a law which the commission has been authorized to promulgate; but we do not understand this to be its province. Section 4 provides: "Said commission is hereby authorized and empowered to ascertain and declare * * * (a) standards of hours," etc. By section 8 it is only after investigation by the commission, and when it is of opinion therefrom that any substantial number of women in any occupation are working unreasonably long hours or for inadequate wages, that it shall, by means of a conference, ascertain what is a reasonable number of hours for work and a minimum rate of wages, when it may make such an order as may be necessary to adopt such regulation as to hours of work and minimum wages; and section 1 of the act shall be enforced on that basis.

There is nothing in the record suggesting that there is a substantial number of woman workers in the same occupation as those included in the order complained of here working unreasonably long hours or for an inadequate wage in any other locality than Portland. Other cases as they are discovered are to be remedied as provided therefor, but the law is State-wide, and it does not give the plaintiff unequal protection of the law, nor grant to others privileges denied to him; neither does it delegate legislative power to the commission. It is authorized only to ascertain facts that will determine the localities, businesses, hours, and wages to which the law shall apply. Counsel urges that the law upon this question interferes with plaintiff's freedom of contract, and refers to the language used in *re Jacobs*, 98 N. Y. 98, to wit: "Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will," etc., as a change brought about by the larger freedom enjoyed in this country, and guaranteed by the Federal Constitution and the constitution of the various States in comparison with conditions in the earlier days of the common law, when it was found necessary to prevent extortion and oppression by royal proclamation or otherwise, and to establish reasonable compensation for labor; but he fails to take note that by

reason of this larger freedom the tendency is to return to the earlier conditions of long hours and low wages, so that some classes in some employments seem to need protection from the same conditions for which royal proclamation was found necessary. The legislature has evidently concluded that in certain localities these conditions prevail even in Oregon; that there are many women employed at inadequate wages—employment not secured by the agreement of the worker at satisfactory compensation, but at a wage dictated by the employer. The worker in such a case has no voice in fixing the hours or wages, or choice to refuse it, but must accept it or fare worse.

Plaintiff further contends that the statute is void for the reason that it makes the findings of the commission on all questions of fact conclusive, and therefore takes his property without due process of law. Due process of law merely requires such tribunals as are proper to deal with the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law. It is sufficient for the protection of his constitutional rights if he has notice and is given an opportunity at some state of the proceeding to be heard.

We think we should be bound by the judgment of the legislature that there is a necessity for this act, that it is within the police power of the State to provide for the protection of the health, morals, and welfare of women and children, and that the law should be upheld as constitutional.

MOTHERS' PENSIONS—CONSTRUCTION OF STATUTE—WIDOW—*Debrot v. Marion County, Supreme Court of Iowa (Feb. 19, 1914), 145 Northwestern Reporter, page 467.*—The district court of Marion County denied an application of Olive Debrot, a divorced woman, for the support of her three minor children under the mothers' pension act, and this decision was affirmed by the supreme court. The language of the act permits payments to the mother of dependent children only when she is a widow. The court, speaking by Judge Deemer, said in part:

It will be observed that section 2 of the act undertakes to define the word "widow," or to extend its ordinary meaning, by providing, in substance, that a mother whose husband is an inmate of any of the State institutions shall, for the purposes of the act, be considered a widow so long as the husband is confined therein. The effect of this section in broadening the term is, according to all the canons of construction, to exclude all other persons who might, by interpretation or construction, be thought to be within the terms or spirit of the original act, although not within its letter. The old maxim, "*Expressio unius est exclusio alterius*," is especially applicable to statutes, and of special significance where attempt is made to specifically broaden the scope of a general term. [Cases cited.]

Aside from this, however, it appears from a reading of all the statutes quoted that the common-law liability of both husband and wife for the support of their children is recognized, and provisions are made to enforce this liability by appropriate proceedings. This liability of either or both parents to support their minor children is not, of course, affected by a divorce obtained by one from the other. It

continues in spite of the divorce until the children reach their majority, or until the death of the parents. [Cases cited.]

There is no allegation in the application that the father of the children is unable to support them, and the only showing with reference to Debrot is that he is living in the State of Connecticut, and there procured a decree of divorce from his wife on service by publication. This divorce did not sever the relation of parent and child, although it may have dissolved the marital relations theretofore existing. We must construe the act in question without reference to the present residence of one of the parents, for, if the mother is a widow within the meaning of the statute under which relief is sought, it is entirely immaterial where her divorced husband lives, or what his financial ability.

RAILROADS—QUALIFICATIONS OF EMPLOYEES—CONSTITUTIONALITY OF STATUTE—FREIGHT CONDUCTORS—*Smith v. State of Texas*, Supreme Court of the United States (May 11, 1914), 34 Supreme Court Reporter, page 681.—W. W. Smith was arrested and convicted for violating chapter 46, Texas Laws of 1909, section 2 of which reads as follows:

If any person shall act or engage to act as a conductor on a railroad train in this State without having for two (2) years prior thereto served or worked in the capacity of a brakeman or conductor on a freight train on a line of railroad, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$500, and each day he so engages shall constitute a separate offense.

Smith was 47 years of age, and had been in the railroad business for 21 years as fireman and as engineer on freight, mixed and passenger trains. On July 22, 1910, he acted as conductor of a freight train between two Texas towns, and this constituted the offense with which he was charged. He contended that the statute was unconstitutional as violating the provisions of the fourteenth amendment to the Constitution of the United States, and this contention the Supreme Court upheld, reversing the decision of the court below. Mr. Justice Lamar, in delivering the court's opinion, cited cases and discussed the general power of regulation of such employment in the interest of the public, and continued as follows:

This and the other cases establish, beyond controversy, that, in the exercise of the police power, the State may prescribe tests and require a license from those who wish to engage in or remain in a private calling affecting the public safety. The liberty of contract is, of course, not unlimited; but there is no reason or authority for the proposition that conditions may be imposed by statute which will admit some who are competent and arbitrarily exclude others who are equally competent to labor on terms mutually satisfactory to employer and employee. None of the cases sustains the proposition that, under the power to secure the public safety, a privileged class

can be created and be then given a monopoly of the right to work in a special or favored position.

The statute here under consideration permits those who had been freight conductors for two years before the law was passed, and those who for two years have been freight conductors in other States, to act in the same capacity in the State of Texas. But barring these exceptional cases, the act permits brakemen on freight trains to be promoted to the position of conductor on a freight train, but excludes all other citizens of the United States from the right to engage in such service. The statute does not require the brakeman to prove his fitness, though it does prevent all others from showing that they are competent. The act prescribes no other qualification for appointment as conductor than that for two years the applicant should have been a brakeman on a freight train, but affords no opportunity to any others to show their fitness. It thus absolutely excludes the whole body of the public, including many railroad men, from the right to secure employment as conductor on a freight train.

RAILROADS—SAFETY APPLIANCE ACT—CONSTRUCTION—ELECTRIC RAILWAYS—*Spokane & Inland Empire Railroad Co. v. United States, United States Circuit Court of Appeals, Ninth Circuit (Jan. 5, 1914), 210 Federal Reporter, page 243.*—This was an action against the company named for violation of the safety appliance act of March 2, 1903, on the ground of failure to provide certain cars with grabirons or handholds, and of use of certain others without automatic couplers.

The interurban line of the company extends from Spokane, Wash., to Coeur d'Alene, Idaho, and is 40 miles in length. The cars enter and leave Spokane over tracks of the street-railway system of that city, which is owned by the same company, for a distance of about 1 mile, but do not do a strictly street-railway business over this route. In affirming the judgment of the court below in favor of the United States the court of appeals decided that these facts did not bring the cars within the exception of those "used on street railways." It also overruled the company's exceptions to the exclusion of expert testimony as to whether the kind of handholds which were provided, consisting of an opening in the sills or buffers on the ends of the cars, were safe and suitable appliances. This was held to be a question for the jury to decide upon the evidence rather than the subject of expert testimony.

RAILROADS—SAFETY APPLIANCE ACT—CONSTRUCTION—SWITCHING—*Chicago, Burlington & Quincy Railroad Co. v. United States, United States Circuit Court of Appeals, Eighth Circuit (Nov. 28, 1913), 211 Federal Reporter, page 12.*—This was an appeal by the railroad company from a judgment for the Government in an action for violation of the safety appliance act. The violations were alleged

in four counts, the first charging the use of a car having the coupling apparatus out of repair and inoperative, and the second, third, and fourth the running of three trains, consisting respectively of 42, 36, and 39 cars, with only 9, 10, and 9 cars having air brakes coupled. The act fixes a minimum of 50 per cent of the cars of a train, empowering the Interstate Commerce Commission to increase this percentage, and the commission had fixed on 75 per cent.

As to the first count the court of appeals affirmed the judgment of guilty, holding that section 2 of the act (requiring automatic couplers) applies to switching operations as well as main-line operations; that a defect at one end of a car is a violation of the statute, although the coupling apparatus on the next car is in perfect condition; and that the movement from one yard to another for the purpose of repair was not necessary as claimed by the company.

As to the movement of trains without the coupling of the air brakes on the required number of cars the judgment was reversed. This movement was between two yards of the railroad at Kansas City, Mo., on opposite sides of the Missouri River and 2 miles apart. The words "on its line," "in moving interstate traffic," "to run any such train in such traffic," were held to be properly applicable to trains moving from point to point rather than to switching operations, and the great inconvenience, and delay and congestion of traffic that would result from a compulsory observance of the provision of the section in such cases were pointed out. Two of the three judges sitting on the case concurred in this opinion. Judge Amidon delivered the opinion, and after a full discussion of the matter, which is too long for quotation here, said:

The identical question which is here presented was before the circuit court for the third circuit in *Erie Railroad Co. v. United States*, 197 Fed. 287 [see Bul. No. 112, p. 128], and, we think, was there properly decided, notwithstanding its criticism in *United States v. Pere Marquette R. R. Co.*, 211 Fed. 220 [see this page below].

Judge Hook rendered a dissenting opinion, in which he argued that since these trains moved over the main line of the railroad, the danger from lack of control, and also from the necessity of brakemen standing on the tops of the cars, would be as great as in the case of a through train over the same route and distance.

RAILROADS—SAFETY APPLIANCE ACT—CONSTRUCTION—SWITCHING—*United States v. Pere Marquette Railroad Co.*, *United States District Court, Western District of Michigan* (Sept. 5, 1913), 211 *Federal Reporter*, page 220.—This was an action by the United States against the company named for violation of the safety appliance act. The charges resulted from the movement of a train with certain cars whose coup-

ling apparatus was defective, which train also did not have the air coupled up so that the brakes could be operated from the engine, for a distance of 2 miles over the main track of the railroad between two yards at Grand Rapids. The railroad company was adjudged guilty of these charges. As to the matter of the air brakes, Judge Sessions, in delivering the opinion, said in part:

Counsel for defendant rely upon the case of *Erie R. Co. v. United States*, 197 Fed. 287 [see Bul. No. 112, p. 128], decided by the circuit court of appeals in the third circuit. That case differs from the present one in some material respects, but in the main it supports defendant's contention. I have the profoundest respect for that court and its decisions, and it is with much diffidence and hesitation that I feel compelled to reach a different conclusion. In the *Erie* case, however, the court seems to have entirely overlooked, ignored, and disregarded the controlling effect of the modifying and explanatory act of 1903. After careful and patient study, I am also convinced that the decision in the *Erie* case is in conflict with both the spirit and the letter of the utterances of the Supreme Court.

RAILROADS—SAFETY APPLIANCE ACT—CONSTRUCTION TRAINS—*La Mere v. Railway Transfer Co., Supreme Court of Minnesota, 145 Northwestern Reporter, page 1068.*—The plaintiff, Joseph La Mere, a switchman, was injured by being thrown from a car being hauled with several others by the defendant company, by an emergency stop which it was claimed was unnecessarily and negligently made by the engineer. The air brakes were connected on the string of cars. The most interesting point involved is as to whether this was a train in the meaning of the Federal safety appliance act. The conditions are shown in the following quotation from the opinion written by Judge Dibell, holding that the law does apply, and affirming a verdict of the district court of Hennepin County in favor of the plaintiff:

The defendant is a transfer company. It is conceded that the operation in which it and the plaintiff were engaged at the time of his injury was an interstate operation. It was taking some 15 cars, all or all except one loaded, sometimes called a "drag," from its yards to the Chicago, Milwaukee & St. Paul yards, referred to sometimes as the Milwaukee Transfer. An important question is whether these cars with the locomotive hauling them constituted a train within the meaning of the safety appliance act. The cars had been loaded at the mills and switched onto track numbered 7 which was set apart for the use of the Milwaukee road.

The defendant hauled the transfers for four roads. It connected the air on all trains except those of the Milwaukee. The Milwaukee was the shorter haul. The danger from not using air in the Milwaukee haul may have been different in degree from the danger in other hauls, and sometimes it may have been different in kind, and it may have differed at times in degree and in kind from a main-line haul,

at times being greater and at times less. In general the dangers were similar. They came from the fact that the engineer, without the air connected, was not in control of his train, and what the particular result might be on a long haul or a short haul, or on a main-track line, or on a haul through the transfer yards, either to the trainmen or to the public, no one could foretell.

It is not important that no caboose was attached. It is not important that when the train got to the Milwaukee yards the cars might be rearranged and go to different destinations as parts of different trains. It is not important that the engine was in a backward instead of a forward movement. The cars were on an interstate journey when they left track 7 and they made up a train. The trainmen were subject to the dangers against which the safety appliance act sought to guard them by requiring the air to be connected. The cars and engine come within the ordinary definition of a train.

RAILROADS—SAFETY APPLIANCES—CONSTITUTIONALITY OF STATUTE—ELECTRIC HEADLIGHTS—*Atlantic Coast Line Railroad Co. v. Georgia, United States Supreme Court (June 8, 1914), 34 Supreme Court Reporter, page 829.*—The Court of Appeals of the State of Georgia affirmed the judgment of the city court of Richmond County, which had convicted the railroad company named of violation of the provisions of the Civil Code of Georgia, sections 2697 and 2698, which statute requires railroad companies to equip each locomotive running on their main line after dark with a headlight which shall consume not less than 300 watts at the arc, and with a reflector not less than 23 inches in diameter, and to keep the same in good condition. The statute excepts tramroads, mill roads, and roads engaged principally in lumber or logging transportation in connection with mills. The Supreme Court also affirmed the judgment of conviction.

The railroad company contended that the statute was unconstitutional in depriving it of liberty of contract, and of property without due process of law, and of the equal protection of the laws; and also that the restriction was an interference with interstate commerce.

The court decided that, although a portion of the equipment of the company must go into disuse on account of the law, the provisions were justified under the police power, because they relate to safety in operation. It also decided that equal protection of the laws was not refused, even if receivers should be held to be without its provisions, in view of the temporary and special character of their management; and with regard to the matter of the exemption of tramroads, etc., speaking by Mr. Justice Hughes, said:

As to the exceptions made by the statute of tramroads, mill roads, etc., it is impossible to say that the differences with respect to operation and traffic conditions did not present a reasonable basis for classification.

The question of interference with interstate commerce was also raised, the locomotive in the case having been used at the time of the violation complained of in interstate traffic. It was held that the States were not denied their right to regulate the operation of railroad trains within their limits, even though such trains were used in interstate commerce, in the absence of Federal legislation in the special field of the statute.

"The requirements of a State, of course, must not be arbitrary, or pass beyond the limits of a fair judgment as to what the exigency demands, but they are not invalid because another State, in the exercise of a similar power, may not impose the same regulation," the remedy for conflict being in the enactment of a paramount regulation by congressional action.

RAILROADS—SAFETY APPLIANCES—REPAIR—*United States v. Chesapeake & O. Ry. Co.*, *United States Circuit Court of Appeals, Fourth Circuit* (Feb. 27, 1914), *213 Federal Reporter*, page 748.—Action was brought against the company named for violation of the safety appliance act in hauling a car with its coupling apparatus defective because of a broken chain. The company set up as a defense the provision which permits a car which becomes defective in service to be carried to the nearest available point for the purpose of making repairs. The car in question was discovered to be out of repair on arriving at the Seventeenth Street yard of the company in Richmond, Va., on February 29, 1912. After being switched about several times it was hauled to the Broad Street yard, three-fourths of a mile away, and placed on a sidetrack for 12 days, where it had to be moved a number of times. It was then taken back to the Seventeenth Street yard and repaired. The repairs took about 10 minutes, and it appeared that they could as well have been made in the first place, that there was no necessity for the car to be taken to a shop, and that the Seventeenth Street yard had better facilities for making the repairs than the other yard. The court held that the danger from a car with a defective coupling is as great in movements about the yards as on the main line, and that the company was guilty of the offense charged.

SEAMEN—FAILURE TO PAY WAGES—CONSTRUCTION OF STATUTE—*The "City of Montgomery," United States District Court, Southern District of New York* (Dec. 15, 1913), *210 Federal Reporter*, page 673.—This was a suit by a seaman to recover the penalty prescribed by U. S. Comp. Stat. 1901, page 3077, for nonpayment of wages within two days after the termination of his employment, as required by the statute. The articles under which the seaman shipped contained a

provision that wages should be payable after one month from the beginning of the voyage, even though it may have terminated sooner. The court decided that such an agreement was not valid in view of the statute. Judge Mayer, speaking for the court, quoted the statute in question and said in part:

It is true that the statute does not in terms declare void an agreement in contravention thereof, but, in speaking of the termination of "the agreement," it is clear that Congress had in mind that, no matter what "the agreement" was, the seamen's wages must be paid within two days after the man had duly performed the service required by "the agreement." Holding this view, I am of opinion that the statute is controlling, and that the provision in the articles here discussed was void and of no effect.

STRIKES—MENTION IN ADVERTISEMENTS FOR EMPLOYEES—CONSTITUTIONALITY OF STATUTE—*Commonwealth v. Libbey, Supreme Judicial Court of Massachusetts (Jan. 9, 1914), 103 Northeastern Reporter, page 923.*—Walter M. Libbey and J. F. Crane were separately convicted in the superior court of Essex County of advertising for employees without stating that a strike existed, and carried their cases to the supreme judicial court on exceptions. The latter court upheld the decision of the court below.

The statute involved is chapter 445 of the Acts of 1910, which requires that every employer who, during a strike or labor disturbance among his employees, publicly advertises in newspapers for persons to work in place of the strikers "shall plainly and explicitly mention in such advertisements * * * that a strike, lockout, or other labor disturbance exists." The chief question was as to the constitutionality of this statute. In delivering the opinion of the court Judge Rugg said:

The legislature may "make, ordain and establish all manner of wholesome orders, laws, statutes and ordinances" not repugnant to the constitution. Part 2, ch. 1, sec. 1, art. 4, of the constitution. This is strong language, and it always has been interpreted broadly in its application to statutes enacted from time to time by the legislature to satisfy the changing needs of society. But the constitution also guarantees to all citizens the blessings of liberty and the right to happiness and safety, and the right to acquire and possess property. In general terms also the Federal Constitution gives substantially the same assurances. The liberty which thus has such ample constitutional security does not signify absolute and unrestrained license to follow the dictates of an unbridled will. Constitutional freedom means a liberty regulated by law.

This statute is not open to the objection that it is class legislation. It applies to all employers similarly circumstanced. It is not arbitrary, and has a reasonable relation to the public interests. It does not destroy equality before the law, nor create special privileges. [Cases cited.]

It is urged that it hampers the right to conduct business beyond what is reasonable, and thus violates the right to acquire and possess property and to make contracts to that end. The situation in an industrial enterprise, when a strike, lockout or other labor disturbance is in progress, manifestly may be quite different from the standpoint of prospective workmen from what it is when peaceful conditions obtain. The social and economic surroundings of an employment might be attractive in the absence of labor troubles, and repulsive when they exist, to considerable numbers of men. Possibly the opposite may be true as to others in society. The disinclination on the part of some to seek employment in the place of strikers may arise from various causes. In view of these considerations it may have been thought that laborers ought to be given a true statement of the condition of labor in this regard, and that any advertisement should give this fact if it exists, as a protection to those who might answer either from a distance or from the neighborhood. It can not be pronounced unreasonable on the part of the legislature to take measures to shield those who labor from being induced in ignorance to seek employment in a place where are the features prevailing in a strike. The statute seems to have a reasonable relation to the accomplishment of the end, and the end itself is one within the scope of legislation.

It has been argued that the purpose of the statute is to harass the employer. But this can not be presumed unless no other rational interpretation is possible. Every assumption is made in favor of the constitutionality of an enactment of the legislature. This statute has a legitimate purpose and effect in protecting innocent searchers after work from being invited to seek employment where a strike is in progress in ignorance of the true state of affairs. It must be presumed that this was the real purpose of the legislative department.

The statute is not unreasonable in its terms. It requires no more than the statement of a fact, a representation of the truth, in the advertisement or solicitation for employees. It does not undertake to confine the statement to any form of words. It may include such amplification in respect to the details of the truth as the employer desires. If he is suffering from an oppressive or unlawful strike, that fact may be stated. The statute being enacted for the protection of innocent third persons, it is of no consequence whether the strike is justifiable or wrongful. The protection of the public is as important in the one case as in the other. This being the purpose of the act, it can not be said that it is invalid because it requires the announcement of the illegal act of others as a condition precedent to the effort to employ labor. If sometimes this may happen, it is incidental and not the necessary aim of the statute.

The statute does not undertake to deny to an employer whose men are on a strike freedom of action in employing others to take their places provided he tells the facts, and hence *Mathews v. People*, 202 Ill. 389, 67 N. E. 28, 63 L. R. A. 73, 95 Am. St. Rep. 241 [Bul. No. 50, p. 188], is not applicable.

An attack also is made on the constitutionality of St. 1912, ch. 545, which provides that Stat. 1910, ch. 445, "shall cease to be operative when the State board of conciliation and arbitration shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on * * * to the normal and usual extent. Said board shall determine this question as soon as may

be, upon the application of the employer." The argument in support of this contention is founded on the assumption that the only way in which the termination of the labor trouble can be proved is by a finding of the board as pointed out in the statute. It is true that this statute relates to evidence of the cessation of the strike. But it does not undertake to provide the exclusive method of determining when a strike is at an end. That may be proved by any competent evidence. If a finding is made by the board that the strike is at an end, then there is no limitation upon the right of the employer to advertise for help. If no finding is made or even if a finding adverse to the employer is made, it is not binding upon an employer. The fact of the cessation of the strike may be proved in any legal way. In any prosecution it is necessary for the Commonwealth to establish that a labor disturbance existed at the time of the advertisement by competent evidence outside the statute. It follows that thus interpreted there is no vesting of judicial functions in a commission by the statute and that this part of it is not open to objection on constitutional grounds.

The statute is not confined in its operation to cases where the advertisement is printed in more than one newspaper. The plural word "newspapers" is used in a generic sense and applies to a publication in one or more papers.

SUNDAY LABOR—CLASS LEGISLATION—CONSTITUTIONALITY OF CITY ORDINANCE—*City of Marengo v. Rowland, Supreme Court of Illinois (June 4, 1914), 105 Northeastern Reporter, page 285.*—The city of Marengo, Ill., brought action against John Rowland for violation of an ordinance prohibiting the keeping open of barber shops on Sunday. The court affirmed a judgment for the defendant, and declared the ordinance unconstitutional as prohibiting a single business but permitting all others to be carried on. The case of *City of Springfield v. Richter*, 257 Ill. 580, 101 N. E. 192 (see Bul. No. 152, p. 169), was distinguished because the ordinance passed upon in that case forbade any usual business or labor, with certain exceptions held to be necessary; and similar ordinances held valid in other States were held not in point, because the statutes of those States forbid all work on the Sabbath, while that of Illinois only forbids the disturbance of the peace and good order of society by labor or amusement.

UNION LABOR—RATE OF WAGES—LABOR ON PUBLIC WORKS—CONSTITUTIONALITY OF STATUTE—*Wright v. Hoxtor et al., Supreme Court of Nebraska (Feb. 13, 1914), 145 Northwestern Reporter, page 704.*—In this case the district court of Douglas County, at the instance of one Alonzo A. Wright, had enjoined the mayor, the members of the city council, and the city clerk of South Omaha, their successors in office, and certain other defendants from carrying out certain contracts relating to labor to be performed on the streets, sewers, etc., of

the city. A statute of the State undertook to provide that work done on streets, sewers, parks, etc., in cities of the class governed by the act (of which South Omaha was one), should be done by union labor and paid for at the rate of two dollars per day, eight hours to constitute a day's labor. (Laws of 1909, ch. 17, sec. 123.) It was claimed that, because of this statute and the insertion of a reference to it in the advertisement for bids (as the statute provides), competition in respect to the proposed improvements was restricted to such contractors as were able to employ union labor, and that fair and free competition was destroyed; that the union labor provision was unconstitutional, and that the rate of wages prescribed and required to be paid was excessive and unreasonable, increasing the cost of improvements to the plaintiff and other taxpayers of the city; for all which reasons the contracts were null and void. The provision as to an eight-hour day was also attacked, but was not ruled upon by the court.

The court below had held the union labor provision unconstitutional, which finding the supreme court affirmed, Judge Hamer, speaking for the court, saying in part:

It is now argued that the provision in the law concerning union labor will make no difference in the cost of improvements. While this may be true, the method proposed is undemocratic. The tendency to exclude bidders by providing that laborers shall belong to a certain restricted class is to prevent competition and increase the probable cost of improvements.

It is argued that the law can not be unconstitutional for the reason alleged that no man may put his finger upon that section of the constitution which forbids this manner of letting the contract.

The trial judge gave great care and study to the preparation of his opinion, and it is deserving of careful consideration.

Judge Hamer then reviewed a number of decisions involving like principles to the case in hand which had been considered below, among them being *Adams v. Brennan*, 177 Ill. 194, 52 N. E. 314 (see Bul. No. 22, p. 478), *Atlanta v. Stein*, 111 Ga. 789, 36 S. E. 932, and cases showing the attitude of the courts of last resort in Iowa, Montana, New Jersey, Tennessee, etc., in all of which such provisions were held objectionable as tending to create monopoly and restrict competition. Continuing, the court said:

It is maintained in the brief of defendants that the digging in the streets contemplated by the contracts is common labor. If that be true, that is an additional reason why the contract should not exclude it in favor of union labor. The common people would be given an opportunity to perform common labor. They are interested in the question as wage earners. They need the labor for the support of themselves and their families. If they are denied a chance to support themselves, they suffer directly, and the State is injured by their loss, the taxpayer is liable to be compelled to pay more taxes than he otherwise would, and he therefore sustains an

injury, and lack of prosperity to both wage earner and taxpayer brings loss and lack of prosperity to the State. The thing done is contrary to the spirit of our Government, which contemplates the best that may be honestly and fairly done for all its citizens. A favor to one citizen ought not to be sustained by the burden placed upon the shoulders of another. Therefore in this case the unskilled laborer who can dig in the streets ought not to be cut off from that work by a provision which calls for union labor; neither should the taxpayer be compelled to pay a higher rate because only union labor can be employed by the contractor. And there should be no fixed rate of wages provided by the legislature without reference to the going wages for that kind of work at the time and place where it is to be performed. The contracts were not let so as to admit of competition. Section 128, ch. 17, Laws of 1909, contains a provision that contracts of this character shall be awarded "to the lowest responsible bidder of the class [of material] so designated." The manner of letting these contracts would take the private property of the taxpayer without due process of law and is in violation of section 3, article 1, of the Bill of Rights.

We are of the opinion that the evidence fully sustains the findings and judgment of the district court on behalf of the plaintiff; that the so-called union labor provision found in the law governing cities of the South Omaha class is unconstitutional and void; that the tendency of such provision and its insertion in the advertisements calling for bids is to limit and restrict the sources of labor and to limit and restrict competitive bidding; that the contracts are void so far as they have been so declared by the judgment of the district court; and that the plaintiff is entitled to the relief given him.

Motions for rehearing were later overruled by the court; the opinion on rehearing, also written by Judge Hamer, is found in 146 Northwestern Reporter, page 997.

WAGES—ASSIGNMENT—CONSENT OF WIFE—CONSTITUTIONALITY OF STATUTE—*Cleveland, Cincinnati, Chicago & St. Louis Railway Co. et al. v. Marshall, Supreme Court of Indiana (June 9, 1914), 105 Northeastern Reporter, page 570.*—H. B. Marshall, an employee of the railway company named, made an assignment of his wages in favor of the two defendants named Scanlan, to pay for a watch. The assignment provided that the total amount should be due on discharge, and when he was discharged on October 16, 1912, nearly the whole of his wages for the portion of a month were held on the assignment. He brought action against the company for the wages, and, having offered to return the watch and pay a certain amount in settlement, against the other defendants for cancellation of the assignment. Marshall was a married man, living with his wife, and Acts of 1909, ch. 34, sec. 4, prohibits the assignment of wages by a married man without his wife's consent in writing and acknowledged. It was contended by the defense that this section applied only to

wage brokers, to whom sections 2 and 3 of the same act were limited; also, that the provision was unconstitutional. The court denied both of these contentions, and affirmed a judgment of the superior court of Marion County in favor of the plaintiff. The following quotation is from the opinion as delivered by Judge Morris:

Improvident debts of the head of the family constitute an important factor, not only in the destitution and illiteracy of the State's youth, but hinders the normal development of their physical, mental, and moral powers. By restricting the power of the householder to pledge his future earnings and those which he has not yet received, the tendency to heedless extravagance is measurably curtailed, and we are of the opinion that the legislation here in controversy is well within the limits of the State's police power, and offends no provision of either State or Federal constitution.

WAGES—PAYMENT—REDEMPTION OF SCRIP—CONSTITUTIONALITY OF STATUTE—*Regan v. Tremont Lumber Co., Supreme Court of Louisiana (Dec. 15, 1913), 63 Southern Reporter, page 874.*—The plaintiff Regan recovered judgment from the company named, basing the demand on the ownership of a large number of coupon books issued by the company to laborers and employees in lieu of money due them for labor and services performed. Act No. 228 of 1908 provides that such checks, etc., shall be payable in money and to the bearer, on demand, and that on failure so to pay recovery may be had with legal interest and 10 per cent attorney's fees. The constitutionality of the statute was attacked by the company on the grounds that it impairs the obligation of contracts, deprives of property without due process of law, and denies equal protection of the laws. In affirming the judgment of the court below, the court, speaking by Judge Land, said:

As the questions raised are Federal, it is proper to consider the adjudications of the Supreme Court of the United States on the subject matter.

In *Knoxville Iron Co. v. Harbison*, 183 U. S. 13, 22 Sup. Ct. 1 [Bul. No. 40, p. 619], the syllabus reads as follows:

"The act of the Legislature of the State of Tennessee * * * of 1899 (ch. 11, p. 17), requiring the redemption in cash of store orders or other evidences of indebtedness issued by employers, * * * does not conflict with any provisions of the Constitution of the United States relating to contracts."

The provisions of the Tennessee statute are, in substance, similar to the provisions of act No. 228 of 1908. The constitutionality of this statute was affirmed both by the court of last resort of the State of Tennessee, and also by the Supreme Court of the United States.

We are constrained to follow that decision as the law of the land until it is reversed by the high court by which it was rendered.

WAGES—PAYMENT IN SCRIP—CONSTITUTIONALITY OF STATUTE—*Keokee Consolidated Coke Co. v. Taylor et al.*, *United States Supreme Court* (June 8, 1914), *34 Supreme Court Reporter*, page 856.—Taylor and others brought action to recover in cash on store orders payable only in merchandise, issued in payment for labor. A Virginia statute forbids the issuance by mining and manufacturing companies of orders not purporting to be redeemable for their face value in money. The objection was urged that the statute is class legislation, and inconsistent with the fourteenth amendment. The Court of Appeals of Virginia affirmed a judgment in favor of the plaintiffs, and the Supreme Court also affirmed these judgments in an opinion by Mr. Justice Holmes from which the following is quoted:

While there are differences of opinion as to the degree and kind of discrimination permitted by the fourteenth amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the court can see. That is for the legislature to judge unless the case is very clear. [Cases cited.] The suggestion that others besides mining and manufacturing companies may keep shops and pay their workmen with orders on themselves for merchandise is not enough to overthrow a law that must be presumed to be deemed by the legislature coextensive with the practical need.

WAGES—PAYMENT ON DEMAND AFTER DISCHARGE—CONSTRUCTION OF STATUTE—PIECEWORK—*Kirven v. Wilds et al.*, *Supreme Court of South Carolina* (Aug. 24, 1914), *82 Southeastern Reporter*, page 672.—John K. Kirven, who had been a pieceworker, recovered judgment against his employers in the circuit court of Kershaw County for \$100, the accumulated penalty provided by Civ. Code S. C. 1912, sec. 3812, for failure to pay wages due him on demand after his discharge. This judgment was affirmed, the court, after showing that there was ample evidence that the plaintiff was discharged, saying:

The only other question is whether plaintiff was a laborer for wages, so as to bring him within the provisions of the statute. He testified that he was paid according to the number of "hanks" he made. Wages may be measured by the piece as well as by the time employed. (40 Cyc. 240.)

WAGES—PAYMENT ON TERMINATION OF EMPLOYMENT—RAILROADS—CONSTITUTIONALITY OF STATUTE—*Cleveland, Cincinnati, Chicago & St. Louis Railway Co. v. Schuler*, *Supreme Court of Indiana* (June 12, 1914), *105 Northeastern Reporter*, page 567.—Section 2683c, Burns' Ann. Stat. 1914, reads as follows:

Any railroad company employing men shall within seventy-two hours after any employee voluntarily quits such service or is discharged, pay to such employee in full the wages due to the time of quitting of such service: Provided, demand is made therefor and upon failure so to do, such railroad company shall be liable to such employee for each day until such payment is made in a sum equal to the daily wage of the employee.

George E. Schuler brought action under this provision, and judgment was in his favor in the superior court of Madison County. On appeal this judgment was reversed and the statute declared unconstitutional. Judge Spencer, in delivering the opinion of the court, said:

There is nothing in the act under consideration which suggests a valid basis for the classification which it makes. It is not designed to regulate the business of common carriers, nor has it any reference to the hazards peculiar to the operation of railroads. In brief, no good reason appears for requiring railroads to pay in accordance with the provisions of this act those who leave their service, while manufacturing corporations and other employers of labor are excepted from its operation.

It will be noted that the act applies to any employee who voluntarily quits the service of a railroad, as well as the one who is discharged. It must therefore apply as well to one who voluntarily quits the service without just cause of complaint as to one who is discharged by the corporation without any reason therefor. If the act applied only to discharged employees a different question would be presented. When the act was passed there was no statute relating to the time of payment of wages of railroad employees, but in 1913 (Acts 1913, p. 47; section 7989a, Burns 1914) a statute was passed requiring all employers of labor to pay their employees semimonthly. If the act in controversy can be held valid, we would have a present situation where the faithful employee who is working regularly can only demand payment of his wages semimonthly, while one who voluntarily quits the service of a railroad company without cause must be paid in 72 hours. There is no just reason for such discrimination. The classification made in the act before us is arbitrary and without any valid reason for its basis.

WAGES—RATES ON PUBLIC WORKS—MUNICIPAL ORDINANCE—CONSTITUTIONALITY—POWERS OF MUNICIPAL CORPORATIONS—*Malette v. City of Spokane, Supreme Court of Washington (Dec. 31, 1913), 137 Pacific Reporter, page 496.*—This case was before the full court on a rehearing following a decision by the first division, which was at this time reversed. The earlier opinion was reported in Bulletin No. 112, on page 132, the statement of facts being as follows:

C. E. Malette was a property holder in the city of Spokane, against whose property an assessment was made to pay the cost of the laying of a sewer in a street on which his property abutted. An ordinance

of the city, following the State law, had declared eight hours to be a day's work on any work done for the city, and further fixed a wage rate of not less than \$2.75 per day for all laborers employed by the day either directly or indirectly by the city; this rate was subsequently raised to a minimum of \$3 per day of eight hours. Current rates of wages for labor of the class employed ranged at the time from \$1.85 to \$2.25 for a 10-hour day, and Malette objected to the assessment for the cost of the sewer construction on account of the excess of the wages named in the ordinance over the current rates of wages, 59 per cent of the cost of the work being paid out to common labor. The contentions of Malette were that the ordinance was unreasonable, contrary to public policy, and oppressive; and secondly, that the assessment was in contravention of the constitution of the State and of the United States in taking property without compensation and without due process of law.

The trial court, the superior court of Spokane County, had given judgment in favor of the city, sustaining the ordinance, which judgment had been reversed by the first division of the supreme court. In taking this position, the supreme court stated that it did not pass upon the constitutional questions involved, but held that an objecting property owner could avail himself of the privilege of insisting that the assessment upon him should be based upon the legitimate cost of the work, regarding the city as the agent given for a season "the privilege of disbursing the taxpayers' money, money that is not city nor public money, but money of the individual."

The present hearing was before the full court, the case being much more thoroughly argued than on the first presentation. Two of the judges concurring in the earlier opinion concurred at the present time in overruling the earlier decision, while three of the nine judges constituting the full bench dissented from the present opinion. The opinion in this case was delivered by Judge Ellis, and discusses extensively the points involved and the related cases. Dependence is largely placed in the cases *State v. Atkin*, 64 Kan. 174, 67 Pac. 519 (Bul. No. 40, p. 604); *Atkin v. Kansas*, 191 U. S. 207, 24 Sup. Ct. 124 (Bul. No. 50, p. 177); and *Byars v. State*, 2 Okl. Cr. 481, 102 Pac. 804 (Bul. No. 86, p. 332). These were cases in which eight-hour legislation was considered, which, as is pointed out in the present opinion, is in itself legislation tending to fix a minimum daily wage above the current rate for the same class of work, inasmuch as the law contemplates no reduction in the per diem wages currently paid in the locality where the work is performed, but does reduce the customary working time. It was held that this point was still further emphasized by the provisions of the Kansas statute that overtime work should be paid for at a rate one and one-half times that allowed for regular service. In this connection Judge Ellis said:

Assuming, as seems to be assumed both in argument and in the original opinion in the case before us, that any minimum of wages fixed above the current rate necessarily increases the cost of the work (a thing by no means certain), then it can not be denied that a provision such as above quoted from the Kansas law would have precisely the same effect. It is too plain for argument that every maximum hours law prescribing less than the number of hours usually constituting a day's labor, when coupled with a provision for minimum pay not less than the current rate for a day's labor, is a minimum wage law pure and simple, prescribing a wage above the current rate for the same class of labor. Every objection, therefore, which can be logically or legally raised against an undisguised minimum wage law, can be advanced, just as logically and just as legally, against the usual eight-hour law.

A considerable quotation was made from the opinion in the case *Atkin v. Kansas*, in which it was said by Mr. Justice Harlan, who delivered the opinion, that "It belongs to the State, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities." Following this Judge Ellis said:

While the Supreme Court did not deem it necessary to place the decision on any other ground than the power of the State to prescribe the terms upon which contracts with it or its agent, the municipality, might be made, it is significant that it also suggests another ground, namely, the promotion of the "general welfare of employees, mechanics, and workmen, upon whom rests a portion of the burdens of government," and as tending to the production of better citizenship, thus unmistakably intimating that the act might also be soundly sustained as an exercise of the police power

It was contended on behalf of the plaintiff, Malette, that the fact that the present case arose at the instance of a protesting taxpayer or property holder took it out of the class of cases cited and that the nature of the payment by assessments removed it from the effect of the decisions referred to. Cases were cited showing the views of various courts on the point involved, the doctrine being laid down that "the manner of payment can not change the character of the work." Judge Ellis then said:

The foregoing authorities make it clear that, if street-improvement work paid for by special assessments is public work performed under authority conferred by the sovereign power of the State, no constitutional guaranty is impaired by the ordinance in question. That such work is public work can not be questioned. The power of the city to levy special assessments to pay for public work is referable solely to the sovereign power of taxation delegated to it by the State under direction of the constitution. We must not confuse the mode of payment for public work with the character of the work. We must not confound the mode of payment with an ownership or property interest in the subject matter to which the work is applied.

We must not confound the mode of taxation with the purpose of taxation. The work of improving a public street is public work and the street is a public street. The special tax is to pay for public work. The right to levy a special tax to pay for public work rests not in the citizen's property interest in the work itself, but only in the special benefit of the work to his property. The work is none the less public work done by the city as an agency of the State, though done also in a quasi corporate or administrative capacity, as distinguished from its purely governmental functions.

A further contention was that, even if the State had power to enact a law fixing minimum wages on public works, a city had no such power. "It is argued that the ordinance is void because it seeks to declare a matter of public policy, and it is asserted that neither this court nor the city council has any power to define the question of policy." As to this Judge Ellis said:

As far as this court is concerned, the truth of the claim is so elementary that it may be passed with a simple admission. As to the power of the council, the question can hardly be so summarily dismissed. It is the clear intention of the constitution to give to cities of the first class, of which the city of Spokane is one, the largest measure of local self-government compatible with the general authority of the State. Constitution, art. 11, sec. 10. It can "make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws." Constitution, art. 11, sec. 11. It can make "all regulations necessary for the preservation of public morality, health, peace and good order within its limits." Rem. & Bal. Code, sec. 7507, subd. 36. As to matters of local concern, wider powers than those conferred upon cities of the first class by the constitution and laws of this State can hardly be conceived. It seems plain, therefore that, unless the ordinance in question is contrary to some public policy of the State either expressed by statute or implied therefrom, it must be held valid.

As we have seen, the State eight-hour law contains in itself a minimum-wage provision as to emergency overtime, which is in excess of the prevailing wage. The eight-hour law manifests a public policy on the part of the State to better the condition of laborers employed upon public work. The purpose of the minimum-wage ordinance is precisely the same, and the policy which sustains the one warrants the other. We fail to find wherein the ordinance in question is contrary to any public policy of the State, either as declared or implied in any statutory enactment. On the contrary, it is in accord with the policy which underlies the eight-hour law.

Other objections of a somewhat technical nature were urged, which the court overruled.

The last objection considered was as to the reasonableness of the statute, Judge Ellis saying that, in its last analysis, the opinion on the first hearing rested on the assumption that any minimum of wages materially above the prevailing rate is unreasonable per se. The duty of the courts in the consideration of the reasonableness of statutes was discussed, with reference to authorities, and a report

of the State commissioner of labor on the increase in the cost of living was quoted from, following which Judge Ellis said:

In view of these conditions, can anyone say that a wage of \$2.75 a day is, as a matter of law, more than a reasonable living wage? The unit, as applied to the problem of living, is the family, not the individual, and \$2.75, or even \$3, a day can hardly be complacently pronounced as an unreasonable sum for supporting such a unit. To hold that the payment of any sum which we can not say is above a reasonable living wage, though it may be above the prevailing rate of wages, is a mere gratuity, would be to sacrifice the fact to a mere term. Such a holding would be an indictment of our civilization.

The judgment of the court below was therefore affirmed, the statute being held to be constitutional and controlling in the matter.

WAGES—SEMIMONTHLY PAY DAY—CONSTITUTIONALITY OF STATUTE—*Erie Railroad Co. v. Williams*, Supreme Court of the United States (May 25, 1914), 34 Supreme Court Reporter, page 761. — The railroad company named brought suit against John Williams as commissioner of labor to restrain him from instituting actions to recover penalties for noncompliance with the provisions of the labor law of the State of New York, which require plaintiff to pay its employees semimonthly and in cash; the object being to test the constitutionality of the law. The complaint was dismissed by the special term of the supreme court, and this decision was successively affirmed by the appellate division and by the New York Supreme Court, from which appeal was taken to the Supreme Court of the United States. In again affirming the judgment, and sustaining the constitutionality of the law, the court, speaking by Mr. Justice McKenna, said in part:

The contention of plaintiff is that the labor law is repugnant to the fourteenth amendment, "in that it deprives the company of property, and specifically deprives the company, and those of its employees to whom it applies, of liberty, without due process of law." The contention may be limited at the outset to the rights of the company. Plaintiff now pays monthly. The extent of its grievance, therefore, is two payments a month instead of one, with the consequence of expense and inconvenience. It is hardly necessary to say that cost and inconvenience (different words, probably, for the same thing) would have to be very great before they could become an element in the consideration of the right of a State to exert its reserved power or its police power. [Cases cited.]

It would seem to be the contention of plaintiff that it acquired by its charter a vested right to deal with its employees according to its own judgment, and, as alleged in its answer, that it was vested with its powers as a railroad and to contract and be contracted with, for the employment of persons to conduct its operations and enterprises at and for such wages and upon such terms of payment as might or should be agreed on. We may, in answering the contention, put aside the rights of natural persons and the rights which

might exist under a constitution which did not reserve control in the State. The effect of the control reserved was to make plaintiff, from the moment of creation, subject to the legislative power of alteration, and, if deemed expedient, of absolute extinguishment as a corporate body. And whether expedient or not is a question for the legislature, not for the courts. In other cases the effect of the reserved power of amendment is said to be to make any alteration or amendment of a charter subject to it which will not defeat or substantially impair the object of the grant or any right vested under the grant. [Cases cited.] Surely the manner or time of paying employees does not come within such limitation. It is a matter of pure administration, not comparable in its burden to those sustained in the cases which we have already cited.

The next contention of plaintiff is that the cost of paying twice a month is a direct burden on interstate commerce. It is not necessary to review and compare the cases in which this court has pointed out the difference between a direct and indirect burden of State legislation upon interstate commerce, or the power of the States in the absence of regulation by Congress. It is enough to say in the present case that Congress has not acted, and there is not, therefore, that impediment to the law of the State; nor is there prohibition in the character of the burden. The effect of the provision is merely administrative, and so far as it affects interstate commerce, it does so indirectly. The court of appeals, as we have seen, considered that the law relates to the wages of railway servants employed wholly within the State, and to those whose duties take them from the State into other States. In other words, did not make it applicable to those employed in other States, and it therefore does not embrace all of the employees of plaintiff, and the contention based upon its application to all is without foundation.

The last contention of plaintiff is that the statute violates the fourteenth amendment, "in that it denies to the employees of the Erie Railroad Company the equal protection of the laws." Considerable argument is made to support the contention, in which a comparison is made between the employees—mechanics, workmen, and laborers—to whom the law applies, and the other employees of the company, and it is declared that all, if any, suffer from monthly payments, and all are entitled, therefore, to receive the benefit of semi-monthly payments. But, as we have said, employees are not complaining, and whatever rights those excluded may have, plaintiff can not invoke.

WAGES—SEMI-MONTHLY PAY DAY—CONSTITUTIONALITY OF STATUTE—IMPRISONMENT FOR DEBT—*State v. Prudential Coal Co., Supreme Court of Tennessee (Oct. 31, 1914), 170 Southwestern Reporter, page 56.*—The company named was indicted for violation of chapter 29, Acts of 1913 (1st ex. sess.), the act being a penal provision requiring the payment of wages in cash when due. The company filed a demurrer to the indictment, which was sustained by the criminal and law court of Morgan County, and this action was affirmed by the supreme court. The exact nature of the statute, and the authority

of the court for holding it unconstitutional, are given in the following extract from the opinion delivered by Judge Williams:

The statute under test provides that all corporations doing business within this State which shall employ any salesmen, mechanics, laborers, and which operate a commissary or supply store in connection with their business, shall pay the wages, balance then due such employee, in lawful money semimonthly on the 15th and 30th of each month, after deductions for advancements have been made.

It is provided in the second section of the statute that a violation of the first section, above outlined, shall be a misdemeanor punishable by fine therein set forth. Imprisonment is not in terms provided to be imposed.

The question thus raised is ruled, in principle, by the case of *State v. Paint Rock Coal Co.*, 93 Tenn. 81, 20 S. W. 499, in which a statute was held unconstitutional which provided that it should be a misdemeanor for any person, firm or corporation to refuse to cash or redeem in lawful currency, any check or scrip within 30 days of issuance, and that, upon conviction, a prescribed fine should be imposed.

The court, after remarking upon the fact that it was not for any fraudulent intent of the person or corporation issuing the check or scrip that he or it was sought to be thus punished, said:

"The act of the legislature in question, while not directly authorizing imprisonment for debt, does attempt to create a crime for the nonpayment of debts evidenced by check, scrip, or order, and for such crime provides a penalty, which may or may not be followed by imprisonment. In that way and for that reason the act is violative of the spirit, if not the letter, of the constitutional provision above cited. It is an indirect imposition of imprisonment for the nonpayment of debt, and is therefore clearly within the constitutional inhibition."

On failure to pay any fine adjudged, by operation of law imprisonment would be imposed on the violator of the statute, if valid.

Obviously the purpose of the statute in question was to enforce the payment of contract wages, and at stated periods, under the penalty prescribed, and it must fall as unconstitutional.

WORKMEN'S COMPENSATION—ABROGATION OF DEFENSES—COMPULSION—LIMITING AMOUNT OF RECOVERY—CONSTITUTIONALITY OF STATUTE—*Kentucky State Journal Co. v. Workmen's Compensation Board*, *Kentucky Court of Appeals* (Dec. 11, 1914), 170 *Southwestern Reporter*, page 1166.—This case was before the court of appeals on questions of the constitutionality of the workmen's compensation act of the State, chapter 73, Acts of 1914. The law provided, among other things, that all persons, firms, and corporations regularly employing six or more persons for profit for the purpose of carrying on any class of business designated in the act should report to the compensation board created by the statute, giving the place of their business, the number of their employees, the amount of their pay roll, and such other information as the board might request, by filling out

blanks furnished by it and returning them to the board. The Kentucky State Journal Co. refused to fill out the blanks submitted to it, and action was brought in the circuit court of Franklin County to compel it to do so. Judgment was against the company in this court, but the case was appealed, the court of appeals reversing the judgment on the ground that the law in question was unconstitutional.

The provisions of the act which were designated by the judge who delivered the opinion as "the storm center of the fight" were those permitting an employee to accept the benefits of the compensation act and waive all causes of action conferred by the constitution or statutes of the State or by the common law, such waiver to be binding upon himself and all persons claiming under or through him; providing that such a contract of waiver shall be conclusively presumed where the employer had elected to make payments into the compensation fund of the State if the employee continues to work without filing a notice of rejection before receiving an injury, provided that the employer has given notice of his coming under the act by posting printed or typewritten notices in conspicuous places about his establishment; providing that the employer of a workman who rejects the provisions of the compensation act after the employer has elected to accept them shall have all the defenses of contributory negligence and assumed risks in their full extent, no other defense being withdrawn from the employer; and providing that where the employer elects not to come under the act he shall be deprived of the defenses of fellow service, assumed risks, and contributory negligence. These provisions were held to be compulsory in effect and to establish limits on the amounts recoverable in violation of the constitution of the State, so that the entire statute must fall.

The opinion of the court was delivered by J. L. Dorsey, one of two special judges appointed on account of the interest of some of the judges in the result of this trial. The decision was rendered by a divided court, three of the seven favoring the upholding of the statute on the ground that it was in effect, as in form, elective, and citing the series of decisions by the courts of last resort of Washington, Wisconsin, Ohio, and other States in which statutes of this same general nature have been declared constitutional.

Judge Dorsey, having stated the facts and quoted the provisions of law particularly in question, spoke for the most part as follows:

Appellant's contention is that this act is invalid, and while counsel for appellant base their reasons for reversal on many grounds, this court will content itself with an examination and inquiry into the following four grounds:

(1) It is claimed that the act is violative of section 54 of the constitution, which provides, "The general assembly shall have no power

to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property."

(2) The act is compulsory in that both the employers and employees are compelled to accept its provisions, and, being compulsory, it deprives appellant of its property without due process of law, and violates section 54 of the constitution.

(3) The act confers upon the workmen's compensation board judicial powers contrary to sections 109 and 135 of the constitution.

(4) The act is in contravention of section 241 of the constitution, which reads as follows: "Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporation and persons so causing the same," etc.

Referring to the provisions of the act (sec. 29) as to agreements to accept benefits under the act, and waive all other rights of action, the court said:

Under this section the compensation of the injured man is limited to the amount specified in the schedule of the act. This constitutes a limitation upon the amount of his recovery under section 54 of the constitution providing that the legislature "Shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property." But we think it is within the power and right of an employee to waive this limit of recovery for injury, by contract, if such contract is freely and voluntarily made.

There may never have been a word or a syllable between the employer and the employee in regard to a contract for employment to labor, yet the act provides that such contract shall be conclusively presumed to have been made between the employer and employee, if the employee continues to work for the employer after the employer has posted notices in some conspicuous places about his place of business, to the effect that he has paid his premiums into the fund and accepted the provisions of the act.

We will go a little further and examine the provisions of section 32 of this act. Suppose the employee, desiring to rely upon the causes of action given him by the constitution and laws of this State, does not accept the so-called benefits of this act, then in that event, under section 32 of this act, the employee, prior to receiving an injury, is compelled to give notice to his employer and to the board that he will not accept the provisions of this act. This notice must be served as provided by the Civil Code for serving notices. So if, after this notice has been served, the employee should be injured or killed while in the service of the employer, he or his personal representative may sue his employer to recover damages; then his right to recover is barred by the provisions of this act, if his injury was caused or contributed to by the negligence of any other employee of said employer, or if the injury was due to any of the ordinary hazards or risks of the employment, or if due to any defect in the tools, machinery, appliances, instrumentality, or place of work, if the defect was known or could have been discovered by the injured employee by the exercise of ordinary care on his part, or was not known or could not have been discovered by the employer by the exercise of ordinary care in time to have prevented the injury, nor

in any event if the negligence of the injured employee contributed to such injuries. Now when his right to recover is restricted by such qualifications and conditions as these, we think these qualifications and conditions constitute, within the meaning of section 54 of the constitution, not only a limitation upon the amount to be recovered, but practically destroy his right to recovery.

When the employer accepts the provisions of this act, the employee is automatically drawn into this so-called contract and made subject to its provisions upon pain of being deprived of all his causes of action. It can not then be said that he has voluntarily elected to accept the provisions of the contract because he is told that unless he accepts the provisions of this act he will be deprived of all these causes of action.

In the light of section 54 of the constitution, we must treat the contract made by the employee under the provision of this act as compulsory and therefore void.

If any employer should determine that he wanted to carry his own risk and make his own contracts, instead of having the law to make a contract for him, he can do so. He can operate his industries and pursue his business, however hazardous, and ignore this act entirely. But what is the result? The law says to this employer:

"You may go on with your business industries, but if one of your employees is injured or killed, you shall not avail yourself of the following defenses: The defense of the fellow servant; the defense of the assumption of risk; or the defense of contributory negligence."

These are practically all the defenses the employer has, and they are taken from him unless he accepts the provisions of this act. He can not, under these conditions, successfully defend any suit for personal injury. If he is sued by an injured employee, about the only question a jury will have to determine will be the amount of recovery.

Under these conditions an employer has practically no choice, no volition. If he continues to operate his business, he is compelled to pay his premiums into the fund and accept the provisions of the act.

We can not subscribe to the proposition, that this is a voluntary contract, even on the part of the employer.

The act under consideration is further vigorously assailed because, as contended by appellant's counsel, it contravenes section 241 of the constitution of the State of Kentucky [providing for recovery for injuries causing death].

If an injury to an employee should result in his death, his personal representative is authorized to recover damages from the negligent person or corporation causing his death. This is an absolute right given by this section of the constitution to his personal representative to recover damages for such negligence as has resulted in his death. And it is immaterial, under this section of the constitution, whether the money recovered goes to the children or parents, or becomes a part of his personal estate. The disposition of the money after his death can not affect the right of the personal representative to recover. It may go to his heirs, or it may become a part of his personal estate and go to his creditors.

The provisions of the act defining beneficiaries were then cited, as well as that giving the compensation board the right to collect benefits

for its own use where no beneficiary under the act is found. As to this the court said:

It seems clear to us that such parts of this act as take from the personal representative or estate of a deceased employee, who left no dependents surviving him, any part of the compensation due such representative or his estate, and directs its payment into this fund for the benefit of other people, is a violation of the above section 241 of the constitution. The legislature has no right to limit the damages recovered, for the death of an employee negligently killed, to his dependents.

Nor do we think the legislature has the right to take what is due the estate of one man and give it to another. While the legislature may say how the recovery may go and to whom it shall belong, it can not say this recovery may be had from the employer; then in the next breath give it to this fund. It then necessarily follows that such parts of this act under consideration as give to this board of compensation without the voluntary contract of the employee the right to recover from the employer for the death of the employee leaving no dependents, and such other parts of the act as coerce the employee to consent or to make a contract that such compensation shall be paid into this compensation fund, are unauthorized and void.

Reference was then made to the compensation acts of the various States having laws of the same or a similar nature, following which the opinion continues:

It will be observed here that there was no constitutional provision in the constitution of Washington, Ohio, Wisconsin, or New York similar to section 54 of the Kentucky constitution, which denied to the Legislature of the State of Kentucky, "the power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property." The workmen's compensation act in all of the States above named, as well as in New Jersey, Massachusetts, and California, differ from the Kentucky act in that there is an appeal granted to the State courts, or a jury is permitted to fix the amount of compensation.

This is the first workmen's compensation act ever passed by our legislature, consequently we have no decisions in this State to guide us, nor do the compensation acts of the other States furnish us very much light, because the constitutions of these States materially differ from the constitution of Kentucky. The Kentucky constitution has limitations and restrictions above referred to that are not found in any of these States which have adopted compensation statutes. And for this reason a lengthy discussion of other compensation acts would be superfluous. This court is bound by the limitations contained in the Kentucky constitution.

Referring to objections made to the adequacy of the provisions of the statute, and the policy therein adopted, the court said:

A sufficient answer to all this is that these are matters addressed entirely to the wisdom of the legislature and can be regulated as necessities may require.

The opinion concludes as follows:

The right of the State to regulate the management of industries arises from the fact that their operation may affect injuriously the health, safety, morals, or welfare of persons engaged in such employments. And these come within the police power of the State, a power sometimes difficult to understand and usually more difficult to define. It is contended for appellee that the act in question grows out of the pursuit and control of industries, by reason of which its operations come within the police power of the State. This is perhaps true, and the legislature has the right to create a compensation board and put it into operation free from the objectionable features of the present act.

This court looks with great favor upon a workman's compensation act that would deal justly with the employer and employee, one that would permit both to voluntarily take shelter under its provisions. And it is not the purpose of the court or the intention of this opinion to lay down any rule that will preclude the legislature from enacting a compensation act that will conform to the constitution, as we are clearly of the opinion that the legislature may in conformity to the constitution adopt an effective compensation law. But this court can not consent that the legislature has the power to put this compensation act in operation by means of compulsory contracts.

Whether the constitutional restrictions herein above discussed are wise or unwise, this court is bound to obey them. It has been well said by an eminent judge that: "The constitution is the paramount law; the judge, legislature, and every citizen are bound by it. The powers of legislation are limited by it, the rights of the citizen are guaranteed and protected by it, and the courts are bound by their oaths to enforce it."

On a petition for rehearing, which was overruled (Jan. 27, 1915), Judge Dorsey said:

In the petition for a rehearing we are requested to modify and extend the opinion. While in no particular receding from the position taken in the opinion herein, we have thought proper to make certain statements therein more explicit:

First. The provisions of the present compensation act, as far as they affect the employer, are unobjectionable, as they do not conflict with any provisions of the constitution.

Second. Any employee coming within the provisions of the act may voluntarily agree to accept its provisions fixing and limiting his recovery in case of injury.

Third. He may likewise voluntarily accept the provisions of the act fixing the amount that shall be recovered in the event of his death, and said sum shall be paid to his dependents, if he leaves any, and if not, to his personal representative. The legislature has no power to direct that this sum shall in any event be paid into the compensation fund.

Fourth. Some provision should be made in the act whereby the employee signifies his acceptance of the provisions of the act by some affirmative act on his part. Silence on this subject should not be construed into acceptance.

Fifth. Provision should be made in the act for appeal to a court of competent jurisdiction for review in all cases where compensation is

denied or where a less sum is allowed by the board than that claimed by the injured employee.

For the reasons indicated in the opinion, the act in its entirety is void.

WORKMEN'S COMPENSATION—ABROGATION OF DEFENSES—EXCLUSION OF SMALL EMPLOYERS—CONSTITUTIONALITY OF STATUTE—*Jeffrey Manufacturing Co. v. Blagg*, Supreme Court of the United States (Jan. 5, 1915), 35 Supreme Court Reporter, page 167.—This action was based on provisions of the workmen's compensation act of Ohio, the question being raised as to the constitutionality of a provision abrogating the defenses of certain employers. This act (sections 1465-37 to 1465-108, G. C.), in its original form, established an elective compensation system with an insurance fund to be maintained by premium payments by employers accepting its provisions. Employers of five or more persons failing to accept the provisions of the act were deprived of the defenses of fellow service, contributory negligence and assumption of risks. Under an amended constitution the law in its present form is compulsory, but the case in hand arose under the elective act. The defendant company, plaintiff in error in the present instance, was sued by Harry O. Blagg to recover damages for injuries received by him while in its employment, and, not having accepted the provisions of the act, it was deprived of the defenses named. Blagg recovered a judgment in the court of common pleas of Franklin County, Ohio, which judgment was affirmed in the court of appeals and the supreme court of the State. The case was then brought on a writ of error to the Supreme Court of the United States on the question of constitutionality, and specifically as to the validity of the provision distinguishing between employers of five or more workmen and those employing less than five persons. The Supreme Court, speaking by Mr. Justice Day, sustained the law as constitutional in an opinion which, following the statement of facts, reads mainly as follows:

The fact that the negligence of a fellow servant is more likely to be a cause of injury in the large establishments, employing many in their service, and that assumed risk may be different in such establishments than in smaller ones, is conceded in argument, and, is, we think, so obvious, that the State legislature can not be deemed guilty of arbitrary classification in making one rule for large and another for small establishments as to these defenses.

The stress of the present argument, in the brief and at the bar, is upon the feature of the law which takes away the defense of contributory negligence from establishments employing five or more and still permits it to those concerns which employ less than five. Much of the argument is based upon the supposed wrongs to the employee, and the alleged injustice and arbitrary character of the legislation here involved as it concerns him alone, contrasting an employee in

a shop with five employees with those having less. No employee is complaining of this act in this case. The argument based upon such discrimination, so far as it affects employees by themselves considered, can not be decisive; for it is the well-settled rule of this court that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of. [Cases cited.]

This court has many times affirmed the general proposition that it is not the purpose of the fourteenth amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the court can declare it beyond the legislative authority.

Certainly in the present case there has been no attempt at unjust and discriminatory regulations. The legislature was formulating a plan which should provide more adequate compensation to the beneficiaries of those killed and to the injured in such establishments, by regulating concerns having five or more employees. It included, as we have said, all of that class of institutions in the State.

This is not a statute which simply declares that the defense of contributory negligence shall be available to employers having less than five workmen, and unavailable to employers with five and more in their service. This provision is part of a general plan to raise funds to pay death and injury losses by assessing those establishments which employ five and more persons and which voluntarily take advantage of the law. Those remaining out and who might come in because of the number employed are deprived of certain defenses which the law might abolish as to all if it was seen fit to do so. If a line is to be drawn in making such laws by the number employed, it may be that those very near the dividing line will be acting under practically the same conditions as those on the other side of it, but if the State has the right to pass police regulations based upon such differences,—and this court has held that it has,—we must look to general results and practical divisions between those so large as to need regulation and those so small as not to require it in the legislative judgment. It is that judgment which, fairly and reasonably exercised, makes the law; not ours.

We are not prepared to say that this act of the legislature, in bringing within its terms all establishments having five or more employees, including the deprivation of the defense of contributory negligence where such establishments neglect to take the benefit of the law, and leaving the employers of less than five out of the act was classification of that arbitrary and unreasonable nature which justifies a court in declaring this legislation unconstitutional.

It follows that the judgment of the Supreme Court of the State of Ohio is affirmed.

WORKMEN'S COMPENSATION—ACCEPTANCE OF ACT BY EMPLOYER—
TIME OF TAKING EFFECT OF ACT—*Coakley v. Mason Manufacturing Co., Supreme Court of Rhode Island (July 10, 1914), 90 Atlantic Reporter, page 1073.*—Marian Coakley brought an action in the superior court of Providence and Bristol counties against the com-

pany named to recover damages for personal injuries received May 19, 1913. The company's defense was based on the fact that on the 26th day of September, 1912, it had filed its acceptance of the compensation act, so that it was liable only under the terms of this act, which had been passed by the legislature in the previous April, to take effect October 1. It was contended by Coakley that this acceptance was not valid, and that the act was not in effect for any purpose previous to October 1; but the court held that the acceptance was valid, and any proceedings must be brought under the act, which view the supreme court affirmed.

WORKMEN'S COMPENSATION—"ACCIDENT"—DEFINITE TIME AS FACTOR—*Liondale Bleach, Dye & Paint Works v. Riker, Supreme Court of New Jersey (Feb. 25, 1914), 89 Atlantic Reporter, page 929.*—Judgment was rendered for the employee, Riker, in the court of common pleas of Morris County, under the workmen's compensation act. This was reversed on appeal, and a new trial granted by the supreme court. Riker had worked in the bleachery of the defendant company 10 days when he was affected with a rash, pronounced to be a condition of eczema, which might have resulted from the acids used in the bleachery.

In rendering the decision, Judge Swayze, who delivered the opinion, reviewed the most important English cases bearing on the point as to whether this state of facts constituted an "accident" under the statute, and concluded as follows:

We need not, of course, consider cases where there has been an accident and disease has followed. We have considered that question in *Newcomb v. Albertson*, 89 Atl. 928 [see p. 247].

The English courts seem at last to have settled that, where no specific time or occasion can be fixed upon as the time when the alleged accident happened, there is no "injury by accident" within the meaning of the act. This seems a sensible working rule, especially in view of the provisions of the statute requiring notice in certain cases within 14 days of the occurrence of the injury—a provision which must point to a specific time.

We need not consider in this case the question of the effect of a finding by the trial judge as in *Brintons, Limited, v. Turvey* [an English case in which a wool comber was infected by anthrax]. Not only is there no such finding of fact, but the learned trial judge rested upon a construction of the statute which makes the word "accident" include "those events which were not only the result of violence and casualty, but also those resulting conditions, which were attributable to and caused by events that take place without one's foresight or expectation." This, however, is to make the employer's liability turn on resulting conditions rather than on the fact of injury by accident. There may indeed be compensation awarded for resulting conditions where you can put your finger on the accident from which

they result; but the ground of the action fixed by the statute is the injury by accident, not the results of an indefinite something which may not be an accident.

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF EMPLOYMENT—*Henry Steers, Inc., v. Dunnewald, Supreme Court of New Jersey (Feb. 25, 1914), 89 Atlantic Reporter, page 1007.*—The plaintiff, Lena Dunnewald, recovered judgment for compensation in the court of common pleas of Hudson County for the death of her intestate, which judgment was reversed by the supreme court. Dunnewald was employed in building a bridge over a river near its outlet in a bay. He was to be at work at 11 o'clock on the evening of April 13, 1912, to assist in placing the new drawbridge construction in place of the old. He left his house to go to work at 9 o'clock, having some miles to go, the last part of which was across a trestle, etc., and was difficult and dangerous. His body was found several days later in the bay. The supreme court held that the facts would not authorize an inference that the death was caused by accident arising out of the employment, although the inference might be drawn that it was caused by accident in the course of the employment. As both elements were necessary to support a recovery under the act, no recovery could be had, and the judgment of the court below was reversed. The English cases similar to this one were discussed as supporting this decision.

WORKMEN'S COMPENSATION—ACTIONS—DEFAULT OF CONTRIBUTIONS—*Barrett v. Gray's Harbor Commercial Co., United States District Court, Western District of Washington (Dec. 3, 1913), 209 Federal Reporter, page 95.*—The Washington workmen's compensation act, Laws of 1911, chapter 74, section 4, requires employers to pay to the State, to create an accident fund, a percentage of wages paid, such payments to be made in advance, based on past pay rolls, and to be adjusted at the end of each year on the basis of the actual pay roll for that year. It further provides that any shortage on such an adjustment shall be made good before February 1, following; and by section 8, that if any workman be injured while the employer is in default for any payment and after demand for the same, the employer shall not be entitled to the benefits of the act, but the workman shall have a right of action. The commission created is empowered to make regulations for the administration of the act. The company named was notified on February 28 of a shortage due on its adjustment, with a demand for payment within 30 days. The plaintiff was injured during that time, and before the payment had been made, but it was afterward made during the time limited. He brought suit, and the company demurred to the complaint. This

demurrer was sustained, and the plaintiff held to have no right of action, on the ground that the demand was presumably in accordance with the regulations of the commission, and did not become effective until the expiration of the 30 days, and that on payment within that time the company was entitled to the benefit of the act.

WORKMEN'S COMPENSATION—AMOUNT OF COMPENSATION—COMMUTATION TO LUMP SUM—*Mockett v. Ashton, Supreme Court of New Jersey (June 7, 1913), 90 Atlantic Reporter, page 127.*—Mockett was injured while in the employ of one Ashton, and compensation in a lump sum was awarded by the court of common pleas of Camden County. In granting the defendant a new trial, Judge Swayze, who delivered the opinion of the supreme court, said:

The judge found that the petitioner's eyesight was affected about one-third; that he had distressing pains in his head, and his nervous system was much below par; that his disability was partial in character and permanent in quality. He therefore decided to commute petitioner's compensation to \$1,000. Since the petitioner claims the benefit of the statute, the statute must be our guide. The schedule contained in the statute does not provide specifically for the injuries involved in this case. The compensation, therefore, must bear such relation to the amounts stated in the schedule as the disabilities bear to those produced by the injuries named in the schedule. We are not informed what sum per week the trial judge thought justified under this statute, nor how he reached his result. The statute provides that the amounts payable periodically as compensation may be commuted to a lump sum provided the same be in the interest of justice. We can not pass upon the justice of the result reached by the trial judge unless we know the sum payable periodically, the method by which he reached his result, and the reasons that induced him to commute the periodical payments into a lump sum. *Long v. Bergen Common Pleas, 84 N. J. Law, 117, 86 Atl. 529.* The case does not even show that he ever determined, as the statute requires, the relation borne by the petitioner's disabilities to those produced by the injuries named in the schedule, nor that he even determined the amount of the periodical payments before commuting them. It seems that he treated the case as if it arose under the common law, and awarded, as a jury might have done in an ordinary action, such sum as seemed to him just.

WORKMEN'S COMPENSATION—AMOUNT OF COMPENSATION—DISABILITY—*De Zeng Standard Co. v. Pressey, Supreme Court of New Jersey (Nov. 6, 1914), 92 Atlantic Reporter, page 278.*—This was a proceeding under the workmen's compensation act. The court, in an opinion by Judge Parker, affirmed the judgment of the court of common pleas of Camden County, deciding some questions of interest in interpreting provisions of the act as to amount of compensation

and nature of disability necessary to entitle a claimant to compensation. The opinion is quoted for the most part, as follows:

This case arises under the workmen's compensation act, and the principal question argued is whether the petitioner should receive an award for the permanent impairment of the function of his right arm, when it is shown that he has been earning the same pay as he earned before the accident.

The petitioner as a carpenter in the employ of the prosecutor earned \$20 a week. He sustained an accident arising out of and in the course of his employment which caused a fracture of the bone of the forearm known as the "radius" at or near the elbow, and which is admitted to have caused the permanent loss of 30 per cent of the use of his arm. After two weeks he went back to work under the same employer, at the same wages, and after a time entered the employ of his son at the same wages. Later on when work became slack he worked independently, receiving the same pay for the time he was actually employed.

In this proceeding the court awarded him 30 per cent of \$10 for the period of 200 weeks, under the provision of the act:

"Where the usefulness of a member or any physical function is permanently impaired, the compensation shall bear such relation to the amount stated in the schedule as the disabilities bear to those produced by the injuries named in the schedule."

The 30 per cent, however, was awarded upon the number of weeks as a base, and consequently the award was the sum of \$10 per week for a period of 60 weeks. This is not the method sanctioned in *James A. Banister Co. v. Kriger*, 84 N. J. Law, 30, 85 Atl. 1027 [see Bul. No. 152, p. 178], where this court sustained an award for the full period with relation to the percentage of the weekly wage on application of the minimum clause.

Applying that rule to the present case, the award would have been for 200 weeks at a minimum of \$5 per week; but the petitioner does not question the form of the award, and plainly the prosecutor is not injured by it.

The prosecutor's principal claim is that there can not be a statutory "disability" when it appears that the earnings of the petitioner had not been impaired. With this we can not agree. It may well be that for a time an injured employee might be able to earn the same wages as before the accident; but, as we read the act, the disability intended thereby is a disability due to the loss of a member, or part of a member, or of a function, rather than to mere loss of earning power. Even if this were not so, it does not follow that the injured employee had not sustained a distinct loss of earning power in the near or not remote future and for which the award is intended to compensate. If it were a question of damages at common law, the elements of damage would consist of present loss of wages, probably future loss of wages, pain and suffering, and temporary or permanent disability, which loss the jury would be at liberty to assess quite independently of the fact that the plaintiff was earning the same wages, except so far as that fact might be evidential with regard to the extent of the disability.

Next it is argued that, because the petitioner worked for the prosecutor for 55 weeks at full wages, these 55 weeks should be

deducted from the 60 weeks for which the award was made. The answer is that the prosecutor was under no obligation to employ the petitioner at \$20 a week or any other sum, and that inasmuch as he chose to do so without any understanding, express or implied, that petitioner was not worth those wages, or that part of them should be treated as moneys paid under the compensation act, he must be presumed to have paid the money as wages and because he thought the petitioner was worth that amount.

WORKMEN'S COMPENSATION—AMOUNT OF COMPENSATION—LOSS OF MOTION OF ARM—PAYMENTS BY INSURANCE COMPANY—*Barbour Flax Spinning Co. v. Hagerty*, *Supreme Court of New Jersey* (Feb. 25, 1914), 89 *Atlantic Reporter*, page 919.—Judgment was rendered in favor of the petitioner, Hagerty, in the court of common pleas of Hudson County, for \$5 per week for 200 weeks, for the loss of motion of his right arm at the elbow, consisting of permanent inability to bend it more than 90 degrees. The amount of compensation awarded was the same as the law provides for the loss of an arm. The law provides that compensation for injuries not specified shall bear such relation to the amounts stated in the schedule of the act as the disabilities bear to those produced by the injuries named in the schedule. On appeal the supreme court held that the award could not be justified under the provision just mentioned, and therefore reversed the decision and remanded the case for a new trial.

It was in evidence that the petitioner Hagerty had received the statutory weekly compensation for his injury for a period of 52 weeks, for which no credit had been given. As to this the court said:

The petition avers that it was received from the insurance company of the defendant. The admission at the trial was that it was paid by the defendant. If that is true, or if the premium for the insurance had been paid by the defendant, credit should have been given. If, however, the payment was by virtue of insurance paid for by the petitioner, the defendant is entitled to no credit therefor.

WORKMEN'S COMPENSATION—AMOUNT OF COMPENSATION—PARTIAL DISABILITY—*O'Connell v. Simms Magneto Co.*, *Supreme Court of New Jersey* (Nov. 25, 1913), 89 *Atlantic Reporter*, page 922.—The only question in this case was as to the amount of compensation. The injuries consisted of fractured skull, broken collar bone and ribs, injury to eye, paralysis of right side of mouth, injury to right nostril and impairment of use of right ear and right arm. Making an allowance for each of these, and totaling them, the judge of the lower court arrived at a total of 340 weeks, and judgment was rendered awarding compensation to the petitioner for that length of time.

On appeal, the judgment was reversed and the case remanded for revision of the compensation, Judge Swayze, who delivered the opinion, saying:

The evidence of the petitioner shows conclusively that the disability of the petitioner is far from total. Under the statute only 400 weeks' pay could have been allowed for total permanent disability, such as loss of both hands, arms, feet, or eyes. None of the injuries suffered by the petitioner are specifically provided for in the schedules contained in the act, and allowance therefor must have been made under the provision that the compensation in other cases shall bear such relation to the amounts stated in the schedule as the disabilities bear to those produced by the injuries named in the schedule.

There is no evidence that the disabilities of the petitioner stand to total disability in the proportion of 340 to 400. On the contrary, the evidence makes it clear that the proportionate extent of the disability is very much less. The difficulty arose probably from the desire of the trial judge to award what he thought was fair compensation. This was, however, disregarding the statute, not following it except in form.

WORKMEN'S COMPENSATION—BENEFITS—IMPAIRMENT OF EARNING CAPACITY—*International Harvester Co. v. Industrial Commission of Wisconsin, Supreme Court of Wisconsin (May 1, 1914), 147 Northwestern Reporter, page 53.*—Ernest Koenig, an employee of the company named, was injured March 5, 1912, by a particle of steel entering one of his eyes. The piece of steel was removed by a magnet, but the employee was incapacitated for work for 10 weeks and 4 days, and there was permanent impairment of the sight of the eye. He was paid for his loss of time and doctor's bills as provided by the act. He resumed work for the company at his former employment, operating a drill press, and up to the time of the hearing for compensation had earned apparently a little more per day at piecework after the resumption of work than before the accident. The industrial commission in its decision said that it was "satisfied from its investigation of injuries of this character and from the testimony that a man injured as applicant was injured can perform the labor that applicant was doing prior to the injury without difficulty." It further said: "The commission is also convinced that in most employments a one-eyed man is physically able to earn substantially the same wage as a man with two eyes."

The commission also found that the applicant's loss of wage because of permanent partial disability was \$2.16 per week, and ordered the company to pay him \$1.41 per week for 15 years. This finding was based on the likelihood that it would be less easy for the employee to secure work on account of his defective sight. The statute provides that the loss in wages for which compensation may be made shall consist of such percentage of the average weekly earnings of the injured

employee as shall fairly represent "the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident."

The court discussed the grounds on which the award of the commission can be set aside, which are stated in the statute as follows: (1) That the commission acted in excess of its powers; (2) that the award was procured by fraud; and (3) that the findings of fact do not support the award. It held that the first ground would cover cases where the commission made a finding of fact without anything upon which to base it, and after full consideration of the supposed basis of the finding that the employee's deficiency in earning power amounted to 15 per cent of his former wages, which basis consisted largely of the results of investigations made by the commission itself, and consideration of the statutes of other States, etc., the court decided that there was no material evidence, also that the loss of earning power of a man with one eye was not the subject of judicial notice; and that the judgment should be reversed and the cause remanded to the commission for further hearing, or judgment entered for the Harvester company, as the circuit court should determine.

Three judges dissented, holding that "it was in evidence that the claimant lost an eye, and, in the exercise of common knowledge and observation, the commission was authorized to infer from this that his capacity to obtain employment was impaired."

WORKMEN'S COMPENSATION—BENEFITS—LOSS OF MEMBER—*Limron v. Blair et al.*, Supreme Court of Michigan (June 1, 1914), 147 *Northwestern Reporter*, page 546.—Phillip Limron made application to the receivers of the Pere Marquette Railroad Co. for an award of compensation for injuries sustained. These consisted of the loss of a foot, and other injuries, which were still producing total disability at the time of the hearing, the disability apparently being largely due to injuries to the shoulder. The law provides for payment of one-half wages for the period of total disability not exceeding 500 weeks, and that in case of injury consisting of loss of certain members the disability shall be deemed to exist for certain periods, that for loss of a foot being 125 weeks. The industrial accident board awarded the payment to the injured employee in this case for the time of his actual total disability, and for 125 weeks to commence at the conclusion of such disability, less 6 weeks' disability incident to the amputation of the foot, the total period not to exceed 500 weeks. The court reversed this award, holding that he should be paid compensation for not less than 125 weeks in any case, but for only that length of time unless his total disability lasted longer than that period, in which case compensation would be paid for the period of disability only.

The court expressed the view that the statute "does not provide a specific indemnity for the loss of a member in addition to compensation for disability," since it "speaks in terms of disability," and "when the period of disability ends compensation ceases."

WORKMEN'S COMPENSATION—BENEFITS—PERMANENT INJURY AND SUBSEQUENT DEATH—*In re Burns, Supreme Judicial Court of Massachusetts (May 21, 1914), 105 Northeastern Reporter, page 601.* Bridget Burns filed a petition under the workmen's compensation act for the injury and death of her husband, John J. Burns. A decree was entered in her favor in the superior court of Suffolk County in accordance with a decision of the industrial accident board, and the insurer appealed. The decree was affirmed. Burns received a fracture of the spine, with severance of the spinal cord, which caused paralysis of the legs and all portions of the body below the fracture. He was taken to a hospital and given medical care, but an extensive bedsore formed because of the necessity of his remaining motionless, which finally resulted in blood poisoning and death. The court decided that the decision of the industrial accident board must be sustained on matters of fact where there was evidence to support them; and this principle was applied to the finding that the death was proximately caused by the injury and to the finding that the injury was not caused by the serious and willful misconduct of the employer. The court remarked that this latter phrase involves conduct of a quasi criminal nature, the intentional doing of something either with the knowledge that it is likely to result in serious injury, or with a wanton and reckless disregard of its probable consequences.

The court also held that compensation was rightly given for the death of the husband as resulting proximately from the injury and for the permanent incapacity of both legs. Although there was no direct physical or external injury to the legs, it was held that their uselessness resulting from the broken spinal cord was an injury to them. It was held, however, that this compensation for permanent incapacity ceased after the death of the injured person, at least in the present case, where no award was made for a definite time on account of it.

WORKMEN'S COMPENSATION—BENEFITS—PERMANENT INJURY NOT CAUSING INCAPACITY—*In re Ethier, Supreme Judicial Court of Massachusetts (May 20, 1914), 105 Northeastern Reporter, page 376.*—In this case it was held that the Massachusetts workmen's compensation act and its amendment, which provides that the same amount as for loss of the member shall be paid "in case an injury is such that the hand, foot, thumb, finger, or toe is not lost, but is so injured as

to be permanently incapable of use," does not provide for damages for permanent injury for the injury of a phalange not resulting in the permanent incapacity of the entire finger.

WORKMEN'S COMPENSATION—BENEFITS—SEPARATE ALLOWANCES—*In re Nichols, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 Northeastern Reporter, page 566.*—The administratrix of a deceased employee began a proceeding for compensation, and the decree of the superior court of Suffolk County awarded her the damages specified by the act for the death of an employee. The employee himself had received 12 weeks' compensation for the loss of "at least one phalange of a finger" in addition to the amount for disability. Afterwards blood poisoning developed and he died. The insurer contended that the payment for loss of the finger should be deducted from the compensation awarded to the widow. The court, however, disallowed this deduction, since the payment for 12 weeks for the loss of a part of a finger is expressly stated to be "in addition to all other compensation."

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—*In re Cheevers, Supreme Judicial Court of Massachusetts (Nov. 24, 1914), 106 Northeastern Reporter, page 861.*—The compensation act of Massachusetts excepted from its provisions cases where "employment is but casual," until an amendment in 1914 removed this exception. Cheevers was engaged in the teaming business on his own account, employing men and having three or four teams, but was occasionally employed by a coal dealer, who engaged him personally with his team, to handle coal. The last period of employment included February 7, 8, 10, 11, 12, 13, 15, and 25, 1913, the last-named date being that of the injury. The last previous period had been February 1, 2, 5, 6, and 7, 1912. Under these circumstances the court held that the employment was casual, and affirmed a decision of the industrial accident board denying compensation.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—*In re Howard, Supreme Judicial Court of Massachusetts (June 17, 1914), 105 Northeastern Reporter, page 636.*—Arthur Howard was injured in the employ of the Edison Electric Illuminating Co., and the insurer claimed that the employment was casual. This contention was based upon the fact that, Howard's employment being to trim trees to keep the wires of the company clear, he was at the particular time of the accident trimming a tree through which none of its wires ran. He was acting, according to the statement of agreed facts, under the

orders of his foreman, who in turn was acting under the orders of the superintendent of the company. The court upheld a decree granting compensation, saying:

In the present case Howard was employed to trim trees, and was to receive his orders from the company through Kennedy. It was no part of his business to inquire into the right of the company to trim any particular tree. He was to receive his orders from Kennedy and to obey them. At the time he was hurt he was doing what he had been hired to do. The work was not casual.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—*Sabella et al. v. Brazileiro, Supreme Court of New Jersey (Oct. 1, 1914), 91 Atlantic Reporter, page 1032.*—This case arose from the death of a longshoreman, which resulted from injury occurring two hours after he began work at a ship. The principal question was whether the employment was casual; and it was held that the work of a class of longshoremen who are ready to work when called upon and are not at work for any one employer constantly, because the latter has a ship in port only a part of the time, is not casual, the court saying that "an employment is not casual—that is, arising through accident or chance—where one is employed to do a particular part of a service recurring somewhat regularly with the fair expectation of its continuance for a reasonable period."

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—AMOUNT OF COMPENSATION—*Schaeffer v. De Grottola, Supreme Court of New Jersey (Feb. 25, 1914), 89 Atlantic Reporter, page 921.*—George De Grottola petitioned the court of common pleas of Essex County, which awarded him compensation of \$10 per week, the maximum compensation, against his employer Schaeffer. On appeal, this award was affirmed. The employee began work on Monday morning for this employer, shaving skins of a kind not usually handled in his establishment, and was injured about 11 o'clock. He was working by the piece, and the arrangements as to continuance were somewhat indefinite, but the court decided that the employment was not "casual," but work in the regular business without limit as to time. As to the amount of compensation, which would be one-half his weekly earnings, it was held that, as he had earned \$1.60 up to 11 a. m., he might properly be found to be earning at the rate of \$4 per day and therefore entitled to the maximum limit of \$10 per week.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT—WAITERS—*In re Gaynor, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 Northeastern Reporter, page 339.*—The decision in this case

turned upon the question as to whether the employment of one Gaynor was covered by the terms of the workmen's compensation act. The industrial accident board had made an award in his favor, and the superior court of Suffolk County issued a decree affirming this decision. This was reversed by the supreme judicial court on the ground that the employment came within the exception of the statute of "one whose employment is but casual." The employee had been hired to act as a waiter at a banquet on a certain day, receiving stipulated wages and his transportation to and from the point of service, and was injured while preparing to serve the banquet. He had never worked for the same employer before, and the employment was to terminate on that day. This was customary in the business of catering, the employers not usually employing any waiters regularly. Under these circumstances the court determined that the employment was "casual," so that no compensation could be received for the injury.

WORKMEN'S COMPENSATION—CLASSIFICATION OF EMPLOYMENTS—RAILROAD CONSTRUCTION—*State v. Chicago, Milwaukee & Puget Sound Railway Co., Supreme Court of Washington (July 15, 1914), 141 Pacific Reporter, page 897.*—This was an action by the State to recover a premium payment from the company named under the State insurance law. The industrial insurance department of the State had classified certain work done by the railroad company as tunnel construction, requiring under the law a premium rate of 6½ per cent. The company insisted that the work should be classified as steam railroad construction work, upon which a contribution at the rate of 5 per cent is required. The view contended for by the company was accepted by the superior court of King County, whereupon the State appealed and secured a reversal of the judgment of the court below, with a direction to enter judgment in accordance with the views maintained by the State.

The compensation act of the State, chapter 74, Acts of 1911, provides for a number of classes of hazardous and extrahazardous employments, fixing the premium rates for each class, rates for tunnels and for railroad construction being as above indicated. It is further provided (sec. 4, subd. 3) that if in a single establishment several occupations are carried on which are in different risk classes the premium shall be computed according to the pay roll of each occupation if clearly separable, otherwise an average rate shall be charged for the entire establishment. The supreme court held that this provision controlled the case, since the pay roll for the tunnel construction was separable. The opinion was delivered by Judge Main, Judge Chadwick dissenting and holding that the enter-

prise rate should be a single one, covering all classes of occupations thereon. From the opinion of Judge Main the following is quoted:

The trial court found, not only the actual pay roll for workmen employed in the tunnel, but that the railroad other than the tunnel had been previously constructed and was in operation. If the operations involved in the construction are so interrelated as not to be clearly separable, then the enterprise classification would prevail. In other words, when the various occupations are separable, each occupation takes the rate of its particular class. But where they are not separable the equalized classification for the enterprise fixed by the statute controls.

WORKMEN'S COMPENSATION—CONSTITUTIONALITY OF STATUTE—*Deibeikis v. Link-Belt Co., Supreme Court of Illinois (Feb. 21, 1914), 104 Northeastern Reporter, page 211.*—Joseph Deibeikis brought action against the company named for injuries alleged to have been sustained while employed in its machine shop. The company pleaded in defense that before the injury both parties had elected to be governed by the terms of the workmen's compensation act (Laws of 1911, p. 315, which was in force at the time of the happening of the injury, but has been superseded by Laws of 1913, p. 335); that the company had posted the required notices, and had done all that the act required of it; that the employee had accepted certain sums of money under the act, and that the company was ready to pay any further sums due; that the employee was governed by the terms of that act, and should adjust his grievances thereunder instead of bringing an action on the case. The plaintiff demurred on the ground of the unconstitutionality of the act. The demurrer being overruled, judgment was entered against him, upon which he appealed. The supreme court upheld the constitutionality of the act. Judge Cooke in delivering its opinion took up the provisions of the act in detail, as follows:

As we understand the points made, the grounds relied upon are that the act is unconstitutional for the following reasons: (1) It is not a proper exercise of the police power; (2) it is class legislation; (3) it delegates judicial powers; (4) it vests the judiciary with executive powers; (5) it deprives appellant of the right of trial by jury; (6) it subjects appellant to unreasonable search; (7) it deprives appellant of his right to contract and of his natural right of waiver. Statutes similar to the one here under discussion have been passed in various States of the Union, and in a number of those States the courts have decided some of the questions here raised by appellant contrary to his contentions. [Cases cited.]

Taking up the points raised by appellant in the order in which they have been set out above, we are unable to see where it can be contended that this act is an attempt to exercise the police power. It will be observed that the act is elective, and that no employer or employee is compelled to accept or come within its provisions unless

he chooses to do so. Therefore, unless the employer or the employee elects to come within the provisions of the act, he is not affected by any of the provisions thereof. This is subject, however, to one exception. Under the conditions specified in section 1, an employer is deprived of the common-law defenses of assumed risk, contributory negligence, and that the injury or death was caused, in whole or in part, by the negligence of a fellow servant. To deprive an employer, under such circumstances, of the right to assert those defenses is not an exercise of the police power, but is merely a declaration by the legislature of the public policy of the State in that regard. The right of the legislature to abolish these defenses can not be seriously questioned.

The rules of law relating to the defenses of contributory negligence, assumption of risk, and the effect of negligence of a fellow servant were established by the courts, and not by our constitution, and the legislature may modify them or abolish them entirely, if it sees fit to do so. [Cases cited.]

The classification made by section 2 of the act [which names the occupations to which the act applies] is not questioned or attacked in any way, but appellant seems to rely upon sections 21 and 22 as constituting class legislation. The classification in section 2 seems to be a perfectly valid and reasonable one. If it is valid and reasonable, there appears no ground upon which to challenge the validity of sections 21 and 22. These sections merely limit an "employee," as the term is used in that act, to include only such as may be exposed to the necessary hazards of carrying on any employment or enterprise enumerated in section 2. These sections are meant to exclude any one who may be occupying a mere clerical position, and whose work is such that he is not subject to any of the hazards of the general business in which the employer is engaged. This is a proper and reasonable classification, and does not violate any inhibition of our constitution.

It is contended that section 3 makes an improper classification, in that it deprives the employee of his common-law remedies, while the employer is permitted to retain them. This is clearly a misapprehension, as the proviso in that section enlarges the remedy of the employee, and correspondingly restricts that of the employer. By this proviso, in case an employee receives an injury as the result of the intentional omission of the employer to comply with statutory safety requirements, the employer, although having elected to come within the provisions of this act, can not avail himself of anything in the act to affect his liability under such circumstances.

The other objections urged may all be answered by the statement that the act is elective and not compulsory. Being elective, the act does not become effective as to any employer or employee, unless such employer or employee chooses to come within its provisions. Having once elected to come within the provisions of the act, as long as such election remains in force the act is effective as to the party or parties making the election, and, in case an employer and an employee both elect to come within the provisions of the act, the act itself then becomes a part of the contract of employment, and can be enforced as between the parties as such. Under this view, it can not be said that by this act judicial power is delegated to boards of arbitrators, contrary to the provisions of our constitu-

tion. Parties to a contract may make valid and binding agreements to submit questions in dispute or any disagreement that may arise to a board of arbitrators composed of persons or tribunals other than the regularly organized courts, and such agreements will be enforced. Either party feeling aggrieved at the award has the right [under provisions of the act] to appeal to a court of record, where the matter is heard *de novo*, and where either party has the right to demand a trial by jury. It will thus be seen that, even though the employee should elect to come within the provisions of the act, he is not wholly deprived of a trial by jury.

It is contended that section 9 also deprives the employee of his liberty and property, that section 10 violates the inhibition against unreasonable search and seizures, and that sections 11 and 13 deprive the employee of his right to contract and of his natural right of waiver. These contentions are all fully answered by the statement that the employee is not compelled to submit to the provisions of the act, but has the power to elect whether or not he will come within its terms and be bound by them. If any of the provisions of the act are objectionable to him, he is not required to subject himself to the act. If he does elect to do so, he can not be heard to complain that the contract he has voluntarily entered into is an unsatisfactory one.

The act is not subject to the objections urged, and the judgment of the circuit court is accordingly affirmed.

WORKMEN'S COMPENSATION—CONSTITUTIONALITY OF STATUTE—*Matheson v. Minneapolis Street Railway Co.*, Supreme Court of Minnesota (July 3, 1914), 148 Northwestern Reporter, page 71.—Ole Matheson brought action against the street railway company named for personal injuries. He was an employee of the city of Minneapolis, and while engaged in laying paving along and near the railway track of defendant, in one of the streets of that city, was struck by one of the defendant's street cars and received injuries which necessitated the amputation of his leg. He alleged in his complaint that the injury was caused by the negligence of the defendant. Defendant, in its answer, among other things, alleged that plaintiff, the city, and defendant had all accepted, were acting under, and were governed by the provisions of part 2 of chapter 467, Laws of 1913 (secs. 8195-8230, G. S. 1913), commonly known as the workmen's compensation act; and that plaintiff's rights were limited and confined to and were measured and determined by the relief provided for in part 2 of that act. Plaintiff demurred to this portion of the answer, contending that the statute relied on was unconstitutional, and appealed from an order overruling the demurrer. On this appeal the court sustained the constitutionality of the workmen's compensation act and affirmed the judgment of the court below.

The act comprises part 1 and part 2, the latter being an elective compensation law, while the former provides that employers electing

not to become subject to the provisions of part 2 shall be deprived of the defenses of the employee's negligence (unless willful), assumption of risks, and fellow service.

Judge Taylor, who delivered the opinion of the court, having stated the foregoing facts, said, in part:

It is claimed that the act violates the equality provisions of the State and Federal constitutions for the reason that it abrogates these three defenses, in actions under part 1, brought against employers who elect not to accept the provisions of part 2, but permits such defenses to be interposed, in actions under part 1, brought against other employers, and also for the reason that the act excludes from its provisions domestic servants, farm laborers, casual employees, and such railroads and railroad employees as are within the legislative domain of the United States. That the defenses mentioned may be entirely abolished, or abolished as to certain classes of employments only, is too well settled to require argument. [Cases cited.] The power to abolish such defenses rests upon the principle that no person has any property right or vested interest in a rule of law, and that the legislature may change such rules at its pleasure. [Cases cited.]

Plaintiff contends, however, that the classifications made by the act are unwarranted, and that the constitutional requirement that all persons shall receive the equal protection of the laws is infringed unless such defenses are abrogated as to all employers, or remain available to all employers, and unless the act applies to the classes excepted from its operation as well as to those included therein.

We think it is within the discretion of the legislature to place in a class by themselves those employers and those employees who, for the reason that they are engaged in interstate commerce, are subject to the laws which have been, or may be, passed by Congress. Within the domain of interstate and foreign commerce, the power of Congress is supreme; and the legislature may well refrain from including, within the operation of the State laws, those persons as to whom such laws are, or may be, rendered nugatory by the laws of the United States. *Deibeikis v. Link-Belt Co.*, 261 Ill. 454, 104 N. E. 211 [p. 216]. The suggestion that the present law does not exclude from its operation all who are engaged in interstate commerce, but only those who are engaged in such commerce by railroad, is sufficiently answered by the decisions affirming the validity of laws which apply only to those engaged in interstate commerce by railroad.

Other courts have held, and we think for sufficient reasons, that the exclusion of domestic servants, farm laborers, and persons whose employment is casual only, from the operation of laws providing compensation for injured workmen is within the proper discretion of the legislature. [Cases cited.]

We also think that the legislature is well within its prerogative when it places in one class employers who become subject to the provisions of part 2 of the act, and in another class employers who do not become subject to such provisions; also when it places in one class employees who become subject to such provisions, and in another class employees who do not become subject thereto. Employers who become subject to part 2 thereby tender to their employees, as a consideration for exemption from common-law liabilities, rights and privileges which

did not previously exist, and offer to assume the burden of duties and obligations which were not previously imposed upon them. Employees who become subject to part 2 thereby tender to their employers immunity from common-law actions as a consideration for the rights and remedies provided for by part 2. These propositions become binding contracts in respect to all who accept them, and remain as continuing offers to those who have not accepted them. An employer or employee, who, at his option, may secure all the advantages possessed by any other, is hardly in a position to claim that he is discriminated against. The defenses of contributory negligence, assumption of risk, and negligence of a fellow servant were doubtless abrogated in the cases specified, and not abrogated in other cases, to induce an acceptance of the provisions of part 2 of the act. But notwithstanding this purpose, the act permits any employer to place himself within either class of employers at his election, and to change from one to the other if he so desires; it also permits any employee to place himself within either class of employees at his election, and to change from one to the other if he so desires. Such legislation is not discriminatory and is not inhibited by the constitution. Furthermore, if its validity rested upon the distinction between the two classes of employers and the distinction between the two classes of employees, we could not say that such distinction is so fanciful and arbitrary, or so wanting in substance, that the legislature is prohibited from applying rules to one class which it does not apply to the other. This is in harmony with the holding of other courts.

The act provides that every employer and every employee shall be presumed to have accepted and become subject to part 2 of the act, "unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given," in the manner prescribed in the act, that he has elected not to become subject thereto. It is beyond question that the legislature has power to create this presumption and to require those who elect not to come under the provisions of part 2, to give notice thereof in the manner prescribed. The act also provides the manner in which one who is subject to the provisions of part 2 may thereafter change and become not subject thereto, and the manner in which one who is not subject to such provisions may thereafter change and accept them. The choice is no less voluntary and optional because a party is deemed to have accepted these provisions, unless he give notice to the contrary, than it would be if he were deemed not to have accepted them until he gave notice to that effect.

The section of the act most vigorously assailed is section 33 (sec. 8229, G. S. 1913), which provides for cases in which the employee is entitled to compensation from his employer under part 2, for injuries which occurred under circumstances also creating a liability against a third party. In case such third party is also subject to the provisions of part 2, the employee may either recover from his employer the relief prescribed by the act, or may bring an action against such third party, but can not proceed against both. If he proceed against the third party, his recovery is limited to the relief prescribed by the act. If he takes compensation from his employer under the act, the employer becomes subrogated to his right of action against the third party and may recover the aggregate amount payable to the

employee with costs, disbursements, and reasonable attorneys' fees. In case such third party is not subject to the provisions of part 2, the employee may maintain an action against him without waiving any rights against the employer and the damages recoverable are not limited to the relief prescribed by the act; but, if the employee recover from such third party, the employer is entitled to deduct, from the compensation payable by him under the act, whatever amount is actually received by the employee from the third party. In other words, if a sum equal to, or exceeding, the compensation payable under the act is actually collected from the third party, the employer is relieved from liability, but, if the sum actually collected be less than the amount payable under the act, he must make good the deficiency. If, instead of prosecuting an action against such third party, the employee collects compensation from his employer, the employer becomes subrogated to the rights of the employee against the third party and may maintain an action against him for the recovery of the damages sustained by the employee, but, after reimbursing himself for the compensation payable to the employee, and for the costs, attorneys' fees, and expenses of collecting the damages, the employer must pay over to the employee any surplus remaining of the amount collected. We find nothing in these provisions contravening any of the provisions of the constitution. They apply to and bind only those who have voluntarily accepted and agreed to them.

A careful examination of the entire act satisfies us that it contains nothing prohibited by either the State or Federal constitution. The fifth amendment to the Federal Constitution applies only to proceedings under the Federal laws, and has no bearing upon the instant case. Section 4 of article 1 of the State constitution, securing the right of trial by jury in all cases at law, expressly provides that such right may be waived. Where employer and employee both become subject to the provisions of part 2 of the act, they thereby waive a jury trial as to matters governed by such provisions. Such right remains unchanged, however, as to all other matters and all other persons. The rights set forth and declared in section 8 of article 1 of the constitution do not appear to have been infringed. The prohibition contained in section 13 of article 1 has no bearing upon the case whatever. The fact that the provisions of part 2 of the act apply to those only who elect to be governed thereby, obviates the objections to the act, not hereinbefore considered, which are based upon the provisions contained in the fourteenth amendment to the Federal Constitution and section 2 of article 1 of the State constitution.

WORKMEN'S COMPENSATION—CONSTITUTIONALITY OF STATUTE—ELECTION—PROCEEDINGS—*Young v. Duncan*, *Supreme Judicial Court of Massachusetts* (June 17, 1914), 106 *Northeastern Reporter*, page 1.—Hazel Young was injured while in the employ of Jefferson E. Duncan. She brought a common-law action, and a plea in abatement made by the defendant was sustained on the ground that the employer was a subscriber under the workmen's compensation act, and the case was decided in favor of the defendant on this point.

Part I, section 5, of the act provides that: "An employee * * * shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or, if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within 30 days of such subscription." The plaintiff claimed that this rule did not apply, since the employer had not given to her the notice required by part 4, section 21, as amended by Statutes of 1912, chapter 571, section 16, which requires every subscriber to "give notice in writing or print, to every person with whom he is about to enter into a contract of hire, that he has provided for payment to injured employees by the association." This section provides no penalty for its nonobservance, nor does it in terms affect the status of the employee in any respect. The court held that the requirement for notice by employees in section 5, in the case of employers who were under the act, was in no wise modified by or dependent upon the provisions of section 21; and that the employee's failure to give notice was a waiver of the right to sue. Judge Rugg, who delivered the opinion, said in part on this point:

If the employee's right to avail himself of the act depended upon actual notice to him of the fact of insurance by the employer, hardship to the employee often might result. There would be strong ground for the argument that the only right of an employee would be at common law unless the employer gave the required notice; a consequence manifestly at variance with the general purpose of the act and one which in many instances would work great hardship. There is no indication in the act itself that part 1, section 5, and part 4, section 22 [21], were intended to be correlative or interdependent. Each stands alone with distinct uses and purposes. As thus interpreted the act is plain and easy of comprehension. If an employee desires to avoid the act, and preserve his common-law rights, he must give notice to that effect in the absence of fraud when he enters the employment rather than when he is notified of insurance by the employer, or he is held to have availed himself of the act. This construction in the vast majority of cases will forward the beneficent aims of the act better than any other.

It was also urged that as so interpreted, part 1, section 5, was unconstitutional as depriving the employee of a right of trial by jury, and of property rights. As to this contention Judge Rugg said:

It is urged that it deprives the plaintiff of her constitutional right to a trial by jury. If that question properly is presented and insisted upon, undoubtedly an employee has a right to trial by jury on the point whether the employer was in truth a subscriber under the act and whether notice had been given by the employee at the time of the contract of hire of an election to rely upon his common-law rights in cases where claim is asserted that such notice had been given.

The issue of fact whether the parties have come under the operation of the act may be tried to a jury. It may be assumed that a right of action for personal injuries at common law is a property right. But the right of trial by jury respecting it goes no further in a case like the present than the right to have the question whether she had retained such a common-law right under the act determined by a jury. But, so far as that right existed in the case at bar, it was waived.

The section in question affects no existing property right. It deals with no property right after it has come into being. It affects a situation which antedates any property right arising out of tort. It simply establishes a status between subscribers under the act and their employees in the absence of express action by the latter manifesting a desire to elect a different status. No complaint justly can be made that the section compels the employee to elect without sufficient knowledge. Ignorance of the law commonly is no excuse for conduct of failure to act. The employee is not required to act without inquiry as to the fact of insurance by the employer. He has only to ask for information. That is nothing more than is required in most of the affairs of life in order that one may act intelligently.

The requirement that the election be made at the time of the contract for hire is reasonable. Difficulties of a serious nature might be presented if the right of election were allowed to be exercised after the happening of the accident.

The possibility that the employee in a given instance may not know all his rights does not affect the constitutional aspects of the law.

The employee is not compelled to give up any common-law or constitutional right. It is a matter of choice whether he avails himself of the one or the other. Reasonable provisions are made for the exercise of his election.

The section is not open to objection as class legislation, or as denying equal protection of the laws. It applies to all employees alike. In this respect it is no more vulnerable than the employers' liability act, which establishes remedies for the benefit of employees, the weekly payment law or many other acts of like nature. The act is constitutional and is not open to criticism in the respects urged by the plaintiff. It follows that judgment rightly was ordered for the defendant in the action at law.

The employee had made no claim under the compensation act. The insurer, following the law, had notified the industrial accident board of the accident, and a commission of arbitration was formed, which made an award in favor of the plaintiff. A claim for review by the industrial accident board, filed by her, was withdrawn, and the superior court entered a decree in accordance with the findings of the arbitration committee. The act as amended provides that when a decree of the superior court has been entered "there shall be no appeal therefrom * * * where the decree is based upon a decision of an arbitration committee." The court held that this was a reasonable provision, and that there was no ground of appeal from the decree of the superior court.

WORKMEN'S COMPENSATION—CONSTITUTIONALITY OF STATUTE—EXCLUSIVENESS OF REMEDY—ELECTION—*Shade v. Ash Grove Lime & Portland Cement Co.*, Supreme Court of Kansas (Apr. 11, 1914), 139 Pacific Reporter, page 1193, 144 Pacific Reporter, page 249.—Frank D. Shade brought action against the company named for damages for personal injury. The action was dismissed on the ground that the employee's remedy under the compensation law of the State was exclusive. Shade thereupon appealed. The supreme court held that while the action should have been brought under the compensation act, it should not have been dismissed, but an award made under the proper act. Judge Benson, who delivered the opinion of the court, in discussing this point, spoke in part as follows:

The petition contained averments sufficient for a cause of action under the factory act (Gen. Stat. 1909, secs. 4676-4683), under which it was obviously drawn; but it also contained charges of negligence sufficient to sustain a cause of action independent of the act.

The first [compensation] act applied to employers within its purview, who elected to come under its provisions, and to accept thereunder, but by the later statute, which took effect March 12, 1913, it is declared that the employer shall be deemed entitled to come within its provisions unless he shall file with the secretary of state a notice of his election not to accept thereunder, and the employee is put in the same situation. The plaintiff was injured March 13, 1913. The defendant filed a statement of its election not to come under the act on March 17. The plaintiff never filed a like declaration. It will therefore be seen that on March 13, the date of the injury, both parties were under the provisions of the act; neither having elected to the contrary, although the defendant did so a few days afterward.

It follows that the plaintiff could not recover otherwise than under the workmen's compensation act, but it is not perceived how this deprived the court of jurisdiction of the person and subject matter, or afforded grounds for a dismissal of the action. The district court clearly had jurisdiction. The action should be reinstated for the pursuit of any appropriate remedy that the present petition or any reasonable amendment may warrant.

The judgment is reversed, and the cause remanded for further proceedings.

This case again came before the court on a rehearing on November 14, 1914. The court in its opinion, delivered also by Judge Benson, affirmed the former opinion as to the exclusiveness of the remedy, and in addition upheld the constitutionality of the act, the following quotations giving the line of reasoning pursued:

It was held in the former opinion that, where the employer and employee are both under the compensation act, the remedy afforded by that statute is exclusive. It is argued that this conclusion is unsound, and that it should be held that the employee may still resort to the factory act for relief. Upon a reexamination of the question, the court remains satisfied with the views stated in the former decision for the reasons stated in that opinion, and in the opinion in *McRoberts v. Zinc Co.*, 144 Pac. 247 [see p. 236].

It should also be observed that an employee is not deprived of the right to the benefit of the factory act nor of common-law remedies without his consent. They remain open to his election, if made before the injury, by filing a declaration "that he elects not to accept thereunder"; that is, under the provisions of the compensation act. Laws 1913, ch. 216, sec. 8.

The provisions of the Federal and State constitutions, guaranteeing due process and equal protection of law invoked by the plaintiff are not violated by this statute, as decided in many jurisdictions. The act classifies occupations with reference to the nature of the business and number of employees. This feature is strenuously objected to as a violation of the constitutional safeguards referred to. Similar provisions are found in like statutes of other States, and have generally been sustained.

After discussing some of the decisions referred to, the opinion takes up other objections as follows:

The objection based upon the supposed deprivation of a right of trial by jury is equally untenable, as determined in many adjudicated cases. The same is true of the arbitration feature and the rules for determining compensation. Without reviewing seriatim all the specific objections made to this statute under the general charge that it violates constitutional safeguards, it is sufficient to say that they have all been met in judicial decisions in other jurisdictions after the most thorough and patient examination. It seems unnecessary, now that the validity of such laws has been so generally maintained, to review the many adjudicated cases, and restate in detail the well-settled principles upon which they are based. Briefly it may be said that the operation of the system of compensation provided by the statute rests upon the free consent of employer and employee, given in the manner provided by the act. Without such consent on his part, the employee retains all his remedies under common and statutory law. It is a matter of election.

WORKMEN'S COMPENSATION—CONSTITUTIONALITY OF STATUTE—TITLE—WAGES—*Huyett v. Pennsylvania Railroad Co., Court of Errors and Appeals of New Jersey (Oct. 16, 1914), 92 Atlantic Reporter, page 58.*—This was a case arising from death by injury in the course of employment, the plaintiff being administratrix of the deceased employee. The judgment in the supreme court was in favor of the plaintiff, and the company appealed. The court of appeals quoted the opinion and affirmed the judgment of the supreme court in favor of the plaintiff, deciding two points raised.

The first was as to the constitutionality of the act, the contention of the defense being that as the title of the act mentioned only "injuries received by an employee," provision for payments of compensation for death was not properly included. The court said: "Whether the injuries result in death or not, they are naturally and properly spoken of as injuries received by an employee."

The second question related to the definition of "wages," the amount of compensation being based on "wages received at the time of injury" in certain cases, on "daily wages" in others, and on "wages" in a third case. The deceased employee was earning, at the time of his fatal injury, a somewhat larger amount than he previously had been earning. The court held that all the provisions referred to wages at the time of injury, and that any injustice caused by these provisions must be corrected by the legislature rather than by the courts.

WORKMEN'S COMPENSATION—CONTRACT OF EMPLOYMENT MADE IN ANOTHER STATE—*American Radiator Co. v. Rogge, Supreme Court of New Jersey (Nov. 5, 1914), 92 Atlantic Reporter, page 85.*—This was a proceeding by John F. Rogge as administrator against the company named for compensation for the death of a workman in the course of employment with the company. The employee died in New Jersey from an injury received in that State, but the contract of employment was made in New York. The supreme court affirmed the judgment rendered for the plaintiff under the New Jersey compensation act in the court of common pleas of Union County, holding that the act covers all accidents occurring in the State, and that the only method by which an employer desiring to avoid coming under the provisions of section 2 regarding compensation can do so is by giving notice of rejection as provided in the act.

WORKMEN'S COMPENSATION—DEPENDENCY—FINDING OF BOARD—*In re Bentley, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 Northeastern Reporter, page 432.*—The industrial accident board found from the evidence that the wife of the decedent Bentley was not dependent upon him at the time of the injury and that his child was partially so, neither having been living with him at the time, and awarded \$1 per week for 300 weeks to the child alone. The claimants appealed, but the findings of fact not being subject to review, and the evidence not having been reported, it could not be contended that they were not warranted as matter of law. The order was therefore sustained as correct.

WORKMEN'S COMPENSATION—DEPENDENCY—FINDING OF BOARD—*In re Herrick, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 Northeastern Reporter, page 432.*—The superior court of Suffolk County issued a decree awarding compensation to the daughter of George Herrick, and the insurer of his employer appealed. All the evidence having been reported, the supreme judicial court held that it was a question of law whether there was some evidence on which

to base the finding that the daughter was dependent on her father. It decided that there was such evidence and therefore affirmed the decree of the court below.

Judge Sheldon, speaking for the court, said in part:

She [the daughter] received practically all of his wages; she testified that all of her support came from him. That but for her sense of duty, because she thought that her father needed her care, she might have continued to earn enough for her own support, and to be independent of him, can not be decisive as matter of law against her claim. The board well might base its conclusions upon the facts as they were and not upon what might have been the case if her sense of filial duty had been weaker.

WORKMEN'S COMPENSATION — DEPENDENCY — PRESUMPTIONS — WIFE LIVING APART FROM HUSBAND—*In re Gallagher, Supreme Judicial Court of Massachusetts (Oct. 24, 1914), 106 Northeastern Reporter, page 558.*—Mary E. Gallagher was the widow of an employee who received an injury on December 17, 1912, and died from its effects on January 15, 1913. She had been living apart from him for justifiable cause for about four years, and he had contributed to her support by order of court. She had been obliged, however, to labor and earn a large part of the needful amount. The industrial accident board held that under these circumstances she would be conclusively presumed to be wholly dependent upon her husband, as a wife living with her husband is presumed to be by a provision of the act. On appeal by the insurer this decision was reversed. The court called attention to the fact that since the death of Gallagher the legislature, at the session of 1914, had amended the act by providing that if, at the time of the husband's death, the industrial accident board shall find the wife was living apart for justifiable cause or because he had deserted her, she is conclusively presumed to be wholly dependent upon her husband, but held that the industrial accident board should determine the question of dependence in the present instance under another clause of the statute, which provides that the award shall be made in accordance with the facts as they existed at the time of the injury.

WORKMEN'S COMPENSATION — DEPENDENCY — PRESUMPTIONS — WIFE LIVING APART FROM HUSBAND—*In re Nelson, Supreme Judicial Court of Massachusetts (May 19, 1914), 105 Northeastern Reporter, page 357.*—Alice E. Nelson instituted proceedings under the workmen's compensation act for the death of her husband, Alvin R. Nelson. The superior court of Suffolk County decreed compensation to her and the employer appealed.

The act provides that a wife living with her husband shall be conclusively presumed to be dependent on him. In the present case the wife and husband had lived apart several times for periods of a few months, and at the time of his death had not lived together in the sense of occupying the same house for nearly a year, she being in Nova Scotia during the last six months while he was at work in Boston. There had been no talk of permanent separation or divorce, but she appears to have been largely supporting herself and their child for the year mentioned. Under these circumstances the court held that they were not "living together" in the sense meant by the language of the statute, and that the industrial accident board should ascertain the extent of dependency as a matter of fact.

WORKMEN'S COMPENSATION—DEPENDENTS OF MINORS—*Dazy v. Apponaug Co., Supreme Court of Rhode Island (Jan. 2, 1914), 89 Atlantic Reporter, page 160.*—This was a petition by the father of a minor who had been killed as the result of an accident while in the employ of the company named. The superior court of Kent County had rendered a decree granting compensation only to the extent of the \$200, which is, under the provisions of the act, to be paid as expenses of last sickness and burial where there are no dependents; and this was affirmed by the supreme court, on the ground that after the death of the son the family was still able to save some money weekly. Judge Vincent, speaking for the court, said in part:

The superior court found that the father was not wholly or partly dependent for support upon the earnings of his son at the time of the injury and therefore was not entitled to receive compensation under the terms of the workmen's compensation act. The superior court, however, ordered the respondent to pay to the petitioner the sum of \$200 for the expenses of the last sickness and burial of the son.

We think that the decision of the superior court was correct. The test of dependency is not whether the petitioner, by reducing his expenses below a standard suitable to his condition in life, could secure a subsistence for his family without the contributions of the deceased son, but whether such contributions were needed to provide the family with the ordinary necessities of life suitable for persons in their class and position. *Boyd Workmen's Compensation, sec. 234.* The petitioner is not bound to deprive himself of the ordinary necessities of life to which he has been accustomed in order to absolve the respondent from the payment of damages, nor can he on the other hand demand money from the employer for the purpose of adding to his savings or investments. The expression "dependent" must be held to mean dependent for the ordinary necessities of life for a person of his class and position and does not cover the reception of benefits which might be devoted to the establishment or increase of some fund which he might desire to lay aside.

WORKMEN'S COMPENSATION—DEPENDENTS OF MINORS—BENEFITS
In re Murphy, Supreme Judicial Court of Massachusetts (June 17, 1914), 105 Northeastern Reporter, page 635.—Daniel Murphy instituted proceedings against the Bigelow Carpet Co. and its insurer for compensation for the death of his minor son, Walter Murphy. The boy had earned \$5.67 per week, and contributed all of this to his father for the support of his family, which consisted of the father, mother, and nine children, including Walter. The act provides that in the case of partial dependents "there shall be paid such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the earnings of the deceased at the time of his injury." The industrial accident board found that, although the father was a partial dependent in the sense that he had other income, the earnings of himself and other children, the rule quoted obviously did not apply in such a case, and the amount of compensation should be the same as for a total dependent, in this case the minimum amount permitted by the statute, or \$4 a week, for the 300 weeks specified in the act. The court adopted this view, saying in its opinion delivered by Judge Hammond:

In the present case the father had a large family which he was legally bound to support, and this he was bound to do, whether the children could help or not. The amount contributed by Walter went to help the father in the support of the whole family. Whether it is wise to distinguish as to the support of the individual members of the family in a case like this, as the insurer suggests, is for the legislature.

WORKMEN'S COMPENSATION—DEPOSITIONS FOR USE OF INDUSTRIAL ACCIDENT BOARD—LETTERS ROGATORY—POWER OF COURTS
In re Martinelli, Supreme Judicial Court of Massachusetts (Oct. 23, 1914), 106 Northeastern Reporter, page 557.—Sylvio Martinelli as administrator petitioned the superior court of Hampden County to issue letters rogatory to obtain the testimony of witnesses in the Kingdom of Italy to be used in hearings before the industrial accident board for the recovery of payments under the workmen's compensation act for the death of two persons for whose estates he was administrator. The petition was granted in the trial court, and the insuring company concerned took exceptions thereto and appealed the case, the appeal resulting in the action of the court below being reversed.

Speaking of the uses of letters rogatory, and the power of a court to issue the same, Judge Rugg, who delivered the opinion of the court, used in part the following language:

Letters rogatory as a means of procuring the evidence of witnesses in foreign States are not much in use in this Commonwealth. The

statutes make ample provision to this end by means of depositions. The power to issue a commission rogatory in order to prevent a failure of justice is inherent in a court. But it always has been recognized that such power can be put forth only in aid of a cause actually pending in the court, which issues the letters.

It is not averred in the application nor contended in argument that the proceedings before the industrial accident board are pending in the superior court. Manifestly they are not so pending. The machinery of the workmen's compensation act does not contemplate the ascertainment of facts in that court.

It is not within the power of a court, even of general jurisdiction, to issue letters rogatory to obtain testimony to be used before a tribunal over whose procedure and trials it is given no authority until the case itself may be brought before it for review. Therefore, it is not within the authority of the superior court to procure evidence for use before a tribunal over whose proceedings it has no more intimate supervisory power than it has over the industrial accident board.

WORKMEN'S COMPENSATION—DISTRIBUTION OF COMPENSATION—

In re Janes, Supreme Judicial Court of Massachusetts (Feb. 28, 1914), 104 Northeastern Reporter, page 556.—John C. Janes, the employee, died as a result of injuries which arose out of and in the course of his employment. Janes was a widower. The industrial accident board found that his two minor children were living with him at the time of the injury and were wholly dependent. One child died about a week after the father's death. The decree of the superior court was to the effect that the sum payable as compensation should be divided between the guardian of the surviving child and the administrator of the deceased child. The guardian of the living child did not appeal from this decision, but the insurer did. The court decided that the insurer had no right of appeal in the matter of the distribution of the compensation, the amount being the same in any case. This ruling was said not to intimate an opinion as to the soundness in law of the decree sought to be called in question.

WORKMEN'S COMPENSATION—ELECTION—INCAPACITY—

Gorrell v. Battelle, Supreme Court of Kansas (Nov. 14, 1914), 144 Pacific Reporter, page 244.—James H. Gorrell brought action under the workmen's compensation act against A. C. Battelle. Compensation was awarded in the district court of Franklin County for partial incapacity for the maximum period and in a lump sum, whereupon the defendant appealed. The petition alleged that the defendant had not filed with the secretary of state an election not to accept the terms of the act. This allegation was denied, and on appeal it was contended that the plaintiff should have proved that no such election had been made.

This was, however, overruled by the court, as is shown by the following paragraphs from the syllabus prepared by the court:

The statutory presumption that all employers affected by the workmen's compensation act (Laws 1911, ch. 218, amended by Laws 1913, ch. 216) are within its provisions obtains until the contrary appears, and nonliability to an action for compensation because of an election to stand outside the provisions of the act is an affirmative defense.

An employer, who in good faith denies liability on the ground of such an election, should ask the court to investigate that subject first, and thereby save the time and expense of a further trial. In all but the most exceptional cases, the certificate of the secretary of state will settle the dispute, and the court may require the production of such certificate at any time. Unless the record on appeal clearly discloses that the defense was specifically and unequivocally brought to the attention of the trial court while it had possession of the case, this court will consider the defense as abandoned.

Plaintiff was a carpenter and a brick mason by trade and, in a period of dullness in those trades, was employed by the defendant as a car repairer. His right eye was struck by a piece of steel and destroyed and the sight of the left eye greatly injured, so that he had been able to get only laborer's work and had not been able to do even that satisfactorily. Compensation was awarded on a weekly basis and commuted to a lump sum. The court affirmed the judgment below as to this also, as is shown by the following paragraph of the syllabus:

The workmen's compensation act awards compensation for incapacity to work as a result of injury. This means compensation for loss of earning power as a workman as a result of injury, whether the loss manifest itself in inability to perform obtainable work or inability to secure work to do.

WORKMEN'S COMPENSATION—ELECTION—MINORS—NOTICE—CONSTITUTIONALITY OF STATUTE—*Troth v. Millville Bottle Works, Supreme Court of New Jersey (Oct. 9, 1914), 91 Atlantic Reporter, page 1031.*—Troth, an employee of the bottle works, filed a petition against it for compensation for injury to an eye, and an order that the defendant pay the petitioner \$5 per week for 100 weeks was entered by the Cumberland court of common pleas. Troth was a minor and an apprentice, his contract dating from September 25, 1909, and expiring on the same date in 1913. The injury occurred December 22, 1911, and the compensation act took effect earlier in 1911, but, as is apparent, after the contract of employment was made.

A notice that the employer would not be bound by the terms of section 2 of the act, which provides for workmen's compensation, had been posted and also given by means of the pay envelopes. The court held that this was not, in the case of a minor, a sufficient compliance with the statute, which provides that the section shall apply unless notice is given to the parent or guardian of the minor.

As to the constitutionality of the law as applied to preexisting contracts, the court quoted and followed the Wisconsin decision in *Borgnis v. Falk*, 133 N. W. 209 (see Bul. No. 96, p. 799), and held the provision valid.

The judgment of the court below was accordingly affirmed.

WORKMEN'S COMPENSATION—ELECTION OF REMEDIES—EXCLUSIVENESS—*The "Fred E. Sander," United States District Court, Western District of Washington (Mar. 6, 1914), 212 Federal Reporter, page 545.*—James A. Thompson brought action in admiralty against the vessel named for damages for personal injuries received by him. In his libel the employee admitted the receipt of \$360 from the Industrial Insurance Commission of the State of Washington, but averred that the same was a gratuitous payment out of a fund provided by the State, that the defendant had never contributed anything to said fund, and that the amount was in no manner accepted as payment for the injuries. In taking exceptions to the libel, the defendant contended that the receipt of this money under the compensation act constituted an election which barred the bringing of an action, and the court upheld this contention. Judge Neterer, who delivered the opinion, said:

The common-law right of action being withdrawn, it is immaterial whether payment has been made by the employer to the "accident fund" or not. The fact that the defaulting employer is not protected against actions for injury in case of default of payment after demand will not defeat the injured workman's right to take under the act, should he so elect.

But for the enactment of the workmen's compensation act of the State of Washington, libelant would have two remedies; one his common-law action for damages against the owners, and the other a proceeding in admiralty. The selection of the one remedy would bar a proceeding in the other. A party can not enforce both remedies, and will be required to elect whether to pursue his common-law remedy or proceed in admiralty. The workmen's compensation act, while it took away the common-law action, provided in its stead another remedy. If the libelant determined to obtain relief from the substitute which is provided for his common-law remedy, and received compensation under such act, then he can not proceed in admiralty and thus obtain double compensation for the injury of which he complains.

WORKMEN'S COMPENSATION—EMPLOYERS' LIABILITY—"WILLFUL ACT"—*Mc Weeny v. Standard Boiler & Plate Co., United States District Court, Northern District of Ohio (Jan. 15, 1914), 210 Federal Reporter, page 507.*—John J. McWeeny was very seriously injured while in the employ of the defendant company. He sued the company, in spite of the fact that the company had complied with the

provisions of the workmen's compensation act of Ohio, relying on the provision of section 21-2 of that act that nothing in the act shall affect the civil liability of the employer when the injury has arisen from the willful act of the employer or any of his agents or servants, or from the failure of any of them to comply with any statute for the protection of the life or safety of employees. He recovered a verdict of \$14,000, and the company moved for a new trial, which was denied. The nature of the willful act claimed by the plaintiff, and the view taken by the trial court as to what constitutes such an act, is shown in the following extracts from the opinion of the court as delivered by Judge Day:

The plaintiff and other employees of the defendant company together with a man named Fisher, the foreman, having charge of the work, were engaged in erecting a large sheet-iron tank to be used for the storage of chemicals. This tank was composed of large iron plates which were lifted in position by means of a derrick and boom erected upon a scaffolding placed within this large metal tank. Shortly before the accident occurred, the attention of Fisher, the foreman, was several times directed to the fact that the mast of the derrick was leaning 2 feet, that one of the guy lines was weak, and several of the men said to him that the mast should be straightened and the guy lines should be tightened and replaced. Fisher refused to do this, and, notwithstanding the fact that his attention was called to the defects in this derrick several times and that a strain of a ton load was being placed upon the guy lines and the derrick, the foreman with an oath directed McWeeny and the other men to proceed with the lifting of the heavy iron plate. They did so, and while engaged in this work the scaffolding and derrick collapsed, injuring McWeeny and several other of the men.

The evidence tends to show that the foreman at the time of this unfortunate occurrence was himself in a place which was of no danger to him.

From an examination of these sections [20-1 and 21-2] it is apparent that, where an employer has complied with the provisions of this act in paying the premiums into the funds and in posting the necessary notices, the employee in case of injury, or his representative in case of death, can not recover for negligence or the want of ordinary care; but if the injury results from a willful act, or from the violation of a statute or ordinance or order of any duly authorized officer, which statute, ordinance, or order was enacted for the protection of the life or safety of the employee, then in such event the employee can either take the benefits provided under this act or sue in court to recover.

The defendant contends that the willful act in contemplation of this statute must have been an act done intentionally with a purpose to inflict injury. The court charged at the trial, in part:

"To constitute a willful act in this case, you must find that the action of Fisher was such an action as to evince an utter disregard of consequences so as to inflict the injuries complained of. In other words, the negligent action was such recklessness reaching in degree to utter disregard of consequences which might probably follow. If

the action of Fisher in ordering McWeeny to work on this scaffold and in connection with this derrick was done under such circumstances as to evince an utter disregard for the safety of McWeeny and the other employees working there in connection with him, then that action was a willful act."

If the contention urged by defendant that a willful act had to be an act coupled with an intention to injure the employee were the correct construction of those terms of the statute, then the employers of laborers, so long as they themselves or their employees did not criminally injure their employees, could incur no liability no matter how recklessly or carelessly they conducted their business without any regard to the safety of those employed.

Extreme cases of this sort will seldom arise. I can not believe that the legislature intended that the term "willful act" should be narrowed down to mean a deliberate intent to do bodily injury and nothing else.¹ This compensation act was passed for a purpose; its primary purpose was to protect the men engaged in the various occupations in Ohio.

In my opinion, the case was fairly tried, and the issues fairly submitted, and the motion for a new trial will be overruled.

WORKMEN'S COMPENSATION—EMPLOYMENT DURING PART OF YEAR—COMPUTATION OF WEEKLY PAYMENT—*Andrejwski v. Wolverine Coal Co.*, *Supreme Court of Michigan* (Oct. 2, 1914), 148 *Northwestern Reporter*, page 684.—Anne Andrejwski brought proceedings under the compensation act for the death of her husband, which occurred on November 18, 1912, as the result of an accident in the course of his employment in a mine of the company named. The employer and employee had elected to come under the compensation act, and the plaintiff was the sole dependent and entitled to compensation. The only question was as to the amount of the weekly payment to be made to her. The mine in which the deceased worked was not operated during the whole of any year. For the year immediately preceding it had been operated 148 days, and coal had been sent up and paid for "on his number" on 131 days, the pay for it amounting to \$507.45. It was customary, however, for two or three of the miners to work together, and send the coal up on the number of one of them, so that this did not indicate correctly the amount earned by him. During the remainder of the year he had worked as a cement-block layer and earned \$487.14. The section relating to amount of compensation, on the construction of which the award in this case depended, is as follows:

SEC. 11. The term "average weekly wages" as used in this act is defined to be one fifty-second part of the average annual earnings of the employee. If the injured employee has not worked in the employ-

¹ It may be noted that the legislature of Ohio, in February, 1914, amended the law so as to define the term "willful act" to mean "an act done knowingly and purposely with the direct object of injuring another."

ment in which he was working at the time of the accident, whether for the employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed. If the injured employee has not worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed. In cases where the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

The court held that the methods of determining the weekly wages provided by the first, second, and third sentences of the section quoted were applicable only to employments which continue during substantially the entire calendar year, and that these methods could not reasonably and fairly be applied to the present case. The method which the court concluded should be used in computing the compensation in this case is shown by the following quotation from the opinion as delivered by Judge McAlvay:

To charge this employment with compensation for injuries to its employees on the same basis as employments which operate during substantially 300 days in the year would be an apparent injustice, as such compensation would be based on the theory of impossible earnings by the employee in that employment which operated upon the average a trifle over two-thirds of a working year. This was recognized and provided for by the legislature by omitting from the fourth classification any requirement relative to the average daily wage or salary of an injured employee. This construction, in principle, appears to be supported by the English cases involving questions of like character. [Cases cited.]

In the record is an exhibit showing the annual earnings paid by appellant to the deceased from 1904 to 1912, inclusive, amounting to \$5,175.21. From this table we find that the average annual earnings paid to him during that period were \$575.02, which we will take as a basis for the computation of the compensation to which the claimant is entitled. Having determined his average annual earnings there remains nothing further to do, except to determine the average weekly wages, by dividing this sum by 52, the result of which is \$11.06, as such average weekly wages. One-half of this amount, being \$5.53, would be the amount to be paid weekly to the claimant for a term not exceeding 300 weeks.

WORKMEN'S COMPENSATION—EVIDENCE NECESSARY TO SUPPORT FINDING—*Reck v. Whittlesberger*, *Supreme Court of Michigan* (July 24, 1914), 148 *Northwestern Reporter*, page 247.—Rudolph Reck, a baker, died January 12, 1913, of septic pneumonia, resulting, as his physician testified, from an infected wound in his hand. This was claimed to have been caused on December 26, 1912, from a nail in some fuel with which he was firing an oven in the defendant's bakery. No one in the shop knew of the accident at the time. He finished his work that day and worked nearly two days thereafter, and did not call a physician until January 2. The physician who attended him testified that death resulted from the wound, and the industrial accident board based its award on the determination of the arbitration committee that the applicant for compensation, Reck's widow, was entitled to \$2,250. The board, finding no direct evidence, admitted hearsay evidence, consisting of what Reck told his family and fellow employees as to the cause of the injury. In accordance with the law, the employer notified the board of the accident before Reck's death and made a second report after it, both reports stating that a nail was run into or scratched Reck's left hand while he was throwing wood into the furnace. The court held that, while the "elementary and fundamental principles of judicial inquiry should be observed," so that hearsay evidence should not be admitted, yet the decisions of the accident board should not necessarily be reversed under the rule that error is always presumed to be prejudicial. Since the reports of the employer, made while the sources of information as to the cause of the accident were fresh and available, were sufficient evidence on which to base the finding of the board, the court affirmed its order.

WORKMEN'S COMPENSATION—EXCLUSIVENESS OF REMEDY—PROCEEDINGS UNDER COMMON LAW—NATURE OF AWARD—MEASURE OF DAMAGES—*McRoberts v. National Zinc Co.*, *Supreme Court of Kansas* (Nov. 14, 1914), 144 *Pacific Reporter*, page 247.—E. F. McRoberts was injured while in the employment of the company named and sought to recover in an action, claiming both benefits under the compensation act and damages at common law. Under the compensation act of the State election to accept its provisions is presumed in the absence of an affirmative rejection, which action had not been taken, so that both parties were within its provisions. The company demurred to the declaration, contending that McRoberts was not entitled to claim on both bases but must elect the ground of his procedure. The district court of Wyandotte County overruled the objections of the company, and the case proceeded to trial on the question of damages at common law, the court saying that the claim under the compensation law would be taken under advisement for

future action. The result of the trial was a verdict for the plaintiff in the full amount claimed, whereupon the company appealed, insisting that the remedy provided by the compensation law is exclusive where it applies. This contention was sustained by the supreme court, citing its decision in *Shade v. Cement Co.*, 92 Kan. 146, 139 Pac. 1193 (see p. 224). The decision in the case cited had not been announced when the present case was tried nor when the appeal was taken, but it was conceded at the present time that the case should be settled under the compensation law in accordance with the ruling in the *Shade* case. The question was therefore submitted as to whether, under the record as presented, the judgment of the court below might be treated as an award of compensation. The court held that this was impossible, since to do so would be for it to try and determine an issue that was not considered nor decided by the trial court. Judge Johnston, speaking for the court, said in part:

The elements which enter into a recovery of compensation differ radically from those which warrant a recovery of damages, and the evidence which would support the issue in one is inappropriate to offer in support of the other. Compensation for partial or total disability depends mainly on the average earnings of the injured employee for certain periods preceding the injury, while the damages awarded were not measured by earnings, but were based on the loss which resulted from pain and suffering endured by appellee and to be endured in the future, as well as the loss sustained by the disfigurement of his hand. The extent of the incapacity resulting from the injury is an important question for determination. Is the disability total or partial, and, if partial, is it of a permanent nature? The age of the employee is a consideration, as well as the grade of employment in which he had been engaged for the year preceding the accident; and, in determining what is a just average of the earnings of the employee, it is important to know whether his employment had been casual or continuous, and whether he had been engaged by more than one employer. No issue was formed on the matter of earnings, and the attention of the jury was not called to the evidence relating to wages and the award which the jury made was not based on an average of earnings. On the contrary, as we have seen, the jury were instructed to measure the recovery by the pain and suffering which appellee had endured before the trial and would probably undergo in the future—a measure wholly inconsistent with that prescribed in the compensation statute. Maximum and minimum limitations are placed on the average of the earnings of an employee, and there is also a provision that payments for total and partial disability shall in no case extend over a period of eight years. Here, as we have seen, no consideration was given to any limitation, and the jury were authorized to award damages that appellee might sustain throughout his life by reason of the injury. If compensation is to be contested, an issue should be framed between the parties as to the right to compensation, each having an opportunity to offer testimony in support of the issue, and the compensation should be measured as the statute provides. There is no basis on which this court

can treat the verdict as an award of compensation, nor is it warranted in directing a judgment for any amount on the record, as it stands.

The judgment was therefore reversed and the case remanded for a new trial under the compensation act.

WORKMEN'S COMPENSATION—EXTRAHAZARDOUS EMPLOYMENT—WORKMAN—*Wendt v. Industrial Insurance Commission, Supreme Court of Washington (June 23, 1914), 141 Pacific Reporter, page 311.*—Clara Wendt made application to the industrial insurance commission of Washington for an allowance under the compensation act for the death of her husband, George Wendt. The commission rejected the claim but the superior court of Pierce County overruled this decision and allowed the claim. On appeal by the commission, this judgment was affirmed, the employment being declared extrahazardous within the meaning of the act. Wendt's employer, the Stone-Fisher Co., conducted a department store, and in connection therewith had a repair shop for their delivery wagons and automobiles, separate from the store, and equipped with power machinery of various kinds run by an electric motor. The company employed from one to three carpenters in putting up shelving in the store and other work, and Wendt was the head carpenter previous to his death on March 20, 1912. On that day he attempted to turn on the current so as to use a grindstone to sharpen his chisel. In doing so his hand came in contact with the copper contacts of the switch. The wire which carried the current to the repair shop had become crossed with a high-tension wire, and he was instantly killed by a current of 2,700 volts which passed through his body.

Judge Morris, who delivered the opinion of the court, having stated certain provisions of the act, said:

Section 4, in referring to the particular classes of industry covered by the act, includes in class 5 of construction work "carpenter work not otherwise specified"; in class 29, under the heading "Factories (using power-driven machinery)," "working in wood not otherwise specified"; in class 34, under the same heading, "machine shops not otherwise specified." The same section provides that, if an employer, besides employing workmen in extrahazardous employment, shall also employ workmen in employments not extrahazardous, the provisions of the act shall apply only to the extrahazardous departments and employments and the workmen employed therein. It being shown that the deceased at the time of his injury was employed in a "workshop where machinery is used," that the workshop was a place "wherein power-driven machinery is employed and manual labor is exercised, * * * over which place the employer of the person working therein has the right of access or control," and that he was injured "upon the premises," it seems to us there is no escape from the conclusion that his injury is within the purview of the act.

As to the contention that the employer must also be engaged in an extrahazardous business, the court said:

The act recognizes in section 4 that the same employer may at the same time be engaged in employments both within and without the purview of the act, so far as the hazardous character of the employment is concerned; in which case the act shall apply only to the extrahazardous departments, and to the workmen employed therein. And in this connection it matters not which is the principal business, and which is the incidental business. If the employer conducts any department of his business, whether large or small, as an extrahazardous business within the meaning and defined terms of this act, his workmen would come within the class designated by the act, and be entitled to the protection of the act. Such interpretation we believe falls within the letter as well as the spirit of an act that, because of its humaneness and declaration of a new public policy, should be interpreted liberally and broadly in harmony with its purpose to protect injured workmen and their dependents independent of any question of fault.

WORKMEN'S COMPENSATION—FARM LABORERS—*In re Keaney*, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 *North-eastern Reporter*, page 438.—Patrick Keaney instituted a proceeding under the workmen's compensation act to secure compensation for an injury suffered while employed at farm labor by a market gardener. The industrial accident board and the superior court of Suffolk County decided against his claim, and he appealed, but the decree of the court below was affirmed. The employer hired four drivers and four helpers, who were largely engaged in delivering his products in the city of Boston. These men worked on the farm when not employed in delivery, while others, including Keaney, were constantly employed in farm labor. The employer had adopted the act as to the drivers and helpers by securing insurance intended to cover them only, and the contention on behalf of the injured employee was that in so doing he had placed himself under its provisions as to all his employees. The court held that this would probably be true in cases other than those of the excepted classes of employers and employees, but that if a farmer desired to come under the act in part he might do so. Judge Rugg, who delivered the opinion, said further:

The act is a practical measure designed for use among a practical people. There appears to be no reason for saying that a farmer may not adopt it if he desires. Any contract of insurance made by him under its terms is valid and enforceable. On the other hand, if he does not desire to make it available for all of his employees, there is no insuperable objection to his undertaking an insurance for a limited portion of them. If there are those, separable from others by classification and definition, whose labor is more exposed

or dangerous or whom he may desire to protect for any other reason, there is nothing in the act reasonably interpreted to show why he may not do so. If construed to compel farmers to insure for all their laborers if they undertake to insure any of them, the inevitable tendency would be to discourage resort to the act in any respect.

WORKMEN'S COMPENSATION—"FORTUITOUS EVENT"—HERNIA—*Zappala v. Industrial Insurance Commission, Supreme Court of Washington* (Nov. 17, 1914), 144 *Pacific Reporter*, page 54.—The industrial insurance commission rejected the claim of John Zappala for compensation for an alleged injury causing hernia. On appeal to the superior court of Chehalis County the claimant secured a jury verdict in his favor, and the case came before the supreme court on the appeal of the commission. The opinion of the latter court sustained the judgment of the court below, being delivered by Judge Morris. Speaking of the main question of the interpretation of the language of the act, and quoting the testimony of the injured man as to the circumstances of the injury, he said:

The determinative question arises under section 3 of the act, providing that:

"The words 'injury' or 'injured,' as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease."

The respondent was in the employ of a cooperage company, and on the day of the alleged injury was pushing a heavily loaded truck. The language of the respondent in describing the circumstances under which the injury was received was:

"That the car ran harder than usual, and he tried three or four times to start it but could not move it. Then he put all his strength into it, gave a jerk and hurt himself; felt a sudden pain; could not move for a little while; put his hands where he felt the hurt and called for help; looked at himself and saw a swelling, a small lump where he was hurt; that he had never had any pain there before or any previous rupture."

After discussing the definition of the word "fortuitous," and the principles of interpretation involved, the opinion continues:

The sustaining of an injury while using extreme muscular effort in pushing a heavily loaded truck is as much within the meaning of a fortuitous event as though the injury were the result of a fall or the breaking of the truck. To hold with the commission that if a machine breaks, any resulting injury to a workman is within the act, but if the man breaks, any resulting injury is not within the act, is too refined to come within the policy of the act as announced by the legislature in its adoption and the language of the court in its interpretation. When the appellant admits that the breaking of the truck because of the application of unusual force with resultant injury to the workman is covered by the act, then it must admit that the tearing of muscles or the rupture of fibers, or whatever it is that causes

hernia, while exercising unusual effort, is likewise covered by the act; for there can be no sound distinction between external and internal causes arising from the same act and producing the same result.

Following the above, both the British and American cases are discussed and quoted as upholding the conclusion that a hernia occurring under such conditions should be regarded as a fortuitous event.

WORKMEN'S COMPENSATION—"INCAPABLE OF USE"—*In re Meley*, *Supreme Judicial Court of Massachusetts (Oct. 23, 1914)*, 106 *Northeastern Reporter*, page 559.—Thomas H. Meley brought a proceeding against his employer and the latter's insurer under the compensation act for injuries to his hands. The insurer appealed from the award of the industrial accident board. A provision of the amendment to the act was in controversy which is to the effect that the additional amounts to be paid "in case of the loss of a hand, foot, thumb, finger, or toe," shall also be paid "in case the injury is such that the hand, foot, thumb, finger, or toe is not lost but is so injured as to be incapable of use; provided, that when the incapacity ceases the additional payment shall also cease." The industrial accident board had held that the right hand was incapable of use, and the court held that there was evidence to support this finding, since it showed that the flexor tendons of nearly all the fingers and of the thumb were cut, and that the hand could be used only as a hook. The court also held that the statute warranted giving additional compensation for an injury to one finger of the left hand.

WORKMEN'S COMPENSATION—INCAPACITY FOR WORK—*In re Sullivan*, *Supreme Judicial Court of Massachusetts (May 23, 1914)*, 105 *Northeastern Reporter*, page 463.—William T. Sullivan suffered on February 7, 1913, an injury which resulted in the amputation of an arm. He was able to work on May 31, but on account of the loss of his arm did not secure work until October 25, although he tried diligently to do so during the meantime. The court held that the phrase "incapacity to work" in the compensation act covers not only physical incapacity, but inability to obtain work resulting directly from a personal injury, and that the petitioner was entitled to compensation for the entire time until he began work.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—*Terlecki v. Strauss et al.*, *Supreme Court of New Jersey (Feb. 25, 1914)*, 89 *Atlantic Reporter*, page 1023.—The petitioner in this case was injured while engaged in combing

particles of wool out of her hair at the completion of her day's work, her hair being caught in moving machinery. A judgment of the court of common pleas of Mercer County awarding her compensation was affirmed, the court holding that this injury was received in the course of and arose out of the employment.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—CLIMBING OFF ROOF FOR LUNCH—INTENTIONAL AND WILLFUL MISCONDUCT—*Clem v. Chalmers Motor Co.*, Supreme Court of Michigan (Jan. 5, 1914), 144 Northwestern Reporter, page 848.—Charles S. Clem was killed while in the employ of the defendant company, and the State industrial accident board allowed a claim of \$3,000 for his death which award was on certiorari proceedings affirmed, one judge dissenting on the ground that the injury was due to intentional, willful misconduct. The nature of the accident and the contentions of the defendant are sufficiently shown in the following extracts from the opinion as delivered by Judge Moore. Having quoted some of the provisions of the compensation act (No. 10, Acts of 1912), Judge Moore said:

We have quoted sufficiently from the act to show that it is a very marked departure from the old rule of liability on the part of the employer to the employee. It is clear that as to the employer, who has accepted the provisions of the act, the risks of the employee, arising out of and in the course of his employment, are not assumed as heretofore by the employee but must be compensated for according to the provisions of the act, unless the employee is injured by reason of his intentional and willful misconduct.

The first question, then, is: Did Mr. Clem receive a personal injury arising out of and in the course of his employment? And the second question is: Was he injured by reason of his intentional and willful misconduct? The questions are so interwoven that they may well be discussed together. Mr. Clem, with others, was employed on a December day constructing a flat roof on a large building only 19 or 20 feet high. It would add not only to the comfort of these men but to their efficiency as workers to have them about 9 or 10 o'clock partake of a luncheon, which from the fact that hot coffee was served was called a coffee lunch. The luncheon was ordered by the foreman of the company. It was prepared on the premises, and when it was ready the men were directed by the subforeman to go and partake of it. All of them started to do so. They did not in doing so leave the premises of the appellant. All of them but three went down the ladder. Mr. Clem went down the rope which projected over the eaves 7 feet. If he had kept hold of the rope until he reached the end of it, if he was a man of ordinary height and his arms were of the ordinary reach, his feet would be within 5 or 7 feet of the ground. If, when the call to come to lunch was made, Mr. Clem, in responding to the call, had inadvertently stepped into an opening in the uncompleted roof or in company with the others had, in the attempt to reach the ladder,

got too near the edge of the roof and fallen and been hurt, would it be claimed that the injury did not arise out of and in the course of his employment? The getting his luncheon under the conditions shown was just as much a part of his duty as the laying of a board or the spreading of the roofing material. The injury, then, having arisen out of and in the course of his employment, can it be said that compensation shall be defeated because of his intentional and willful misconduct? His primary object was like that of all the other men to get to and partake of his luncheon. There is nothing to indicate that he intended or expected to be hurt. Nearly all the other men went down by the ladder. He went down by a rope where, if his plans had carried, he would have had to make a drop of only 5 to 7 feet. Is that such intentional and willful misconduct as to defeat compensation under the act? There is scarcely a healthy, wide-awake 10-year old boy who does not frequently take a greater chance and without harm. For a man accustomed to physical toil, judged by what is occurring daily, it can not be said that such an act should be characterized as intentional and willful misconduct within the meaning of the statute.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—EMPLOYEE GOING OFF PREMISES FOR LUNCH—*Hills v. Blair et al.*, *Supreme Court of Michigan (July 24, 1914)*, 148 *Northwestern Reporter*, page 243.—Leone H. Hills made application for an award of compensation before the industrial accident board against the receivers of the Pere Marquette Railroad Co. on account of the death of her husband, who had been a section hand on the railroad. The board awarded compensation to the applicant, and the receivers appealed. Hills on the day of the accident, November 16, 1912, had failed to take his dinner as was usual, it being customary for the crew to eat their lunch at a car house. At noon he started to hurry to his home along the tracks, a distance of about 2,000 feet. As he went along a footpath between the tracks, a freight train was approaching from his rear. A little later his body was found about half the distance from the car house to where he would have left the track near his home, having evidently been thrown against a switch standard, which was bent. It was in dispute whether he probably, in walking or running alongside the train, went too near it and was thrown by it, or whether he attempted to board it to ride, or after having so boarded it attempted to get off when he found that the speed was increasing and the train was not to stop at that station. The board having taken the former view in accordance with the theory of the plaintiff, the court held that it should adopt the same view, there being no direct evidence as to how the accident occurred. It held, however, that the injury did not arise out of and in course of the employment, and the order granting the award was reversed, the employee having left the place of his employment during the inter-

mission allowed for the eating of lunch, and not remaining on the premises, in which case the relation of employer and employee would not have been broken.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—EMPLOYEE GOING OUT TO LUNCH—*In re Sundine, Supreme Judicial Court of Massachusetts (May 21, 1914), 105 Northeastern Reporter, page 433.*—F. L. Dunne & Co. were merchant tailors; Edward Olsen made clothing for the company in its workshop, and Emily Sundine was employed by Olsen. The insurance company holding Dunne & Co.'s risks admitted that under the Massachusetts compensation act it was liable for injuries to the employees of the independent contractor, but contended that the injury did not arise out of and in the course of employment. The injury was sustained while the employee was out of the workshop for the purpose of getting lunch, and upon a flight of stairs which was not under the control of either the company or Olsen, but which furnished the only access to the shop. Judge Sheldon, in expressing the decision of the court that the compensation must be paid, said:

Her employment was by the week. It would be too narrow a construction of the contract to say that it was suspended when she went out for this merely temporary purpose, and was revived only upon her return to the workroom. It was an incident of her employment to go out for this purpose.

Nor do we regard it as decisive against the petitioner that she was injured while upon stairs of which neither Olsen nor Dunne & Co., had control, though they and their employees had the right to use them. These stairs were the only means available for going to and from the premises, where she was employed, the means which she practically was invited by Olsen and by Dunne & Co. to use.

It was a necessary incident of the petitioner's employment to use these stairs. We are of opinion that according to the plain and natural meaning of the words an injury that occurred to her while she was so using them arose "out of and in the course of" her employment.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—PUNCHING TIME CLOCK—*Rayner v. Sligh Furniture Co., Supreme Court of Michigan (Apr. 7, 1914), 146 Northwestern Reporter, page 665.*—The employee, Rayner, was running to punch the time clock, which he was required to do when the noon whistle blew. He ran into another employee, whom he could not see on account of obstructions on the floor, and received injuries which eventually resulted in his death. The court held that going to punch the clock was a part of his employment, and affirmed the award made by the industrial accident board granting compensation to his widow.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN COURSE OF EMPLOYMENT—RIDING TO AND FROM WORK—*In re Donovan, Supreme Judicial Court of Massachusetts (Feb. 27, 1914) 104 Northeastern Reporter, page 431.*—The employee Donovan secured a decree in his favor in the superior court of Suffolk County. From this the insurer of his employer appealed, and the point of interest was as to whether the injury, which occurred while the employee was riding from his place of work in a wagon furnished by the employer, was within the scope of the act. The court decided that it was, affirming the decree of the court below. In the opinion delivered by Judge Sheldon, the discussion of the English cases on the point by Prof. Bohlen in 25 Harvard Law Review, 401 et seq., was referred to, and the court said:

From his discussion and the cases referred to by him, and from the later decisions of the English courts, the rule has been established, as we consider in accordance with sound reason, that the employer's liability in such cases depends upon whether the conveyance has been provided by him, after the real beginning of the employment, in compliance with one of the implied or express terms of the contract of employment, for the mere use of the employees, and is one which the employees are required, or as a matter of right are permitted, to use by virtue of that contract. [Cases cited.]

The finding of the industrial accident board that Donovan's transportation was "incidental to his employment" fairly means, in the connection in which it was used, that it was one of the incidents of his employment, that it was an accessory, collateral or subsidiary part of his contract of employment, something added to the principal part of that contract as a minor, but none the less a real, feature or detail of the contract.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—*Bayne v. Riverside Storage & Cartage Co., Supreme Court of Michigan (July 24, 1914), 148 Northwestern Reporter, page 412.*—Lillian Bayne instituted proceedings for compensation for the death of her husband because of an accident alleged to have arisen out of his employment with the company named. The employee, a strong, well man, employed in moving furniture, quit work August 27, 1913, after lifting at apparent disadvantage a heavy article, complaining that in lifting it he had hurt his back. He took to his bed and next day a physician was called. He became much worse and another physician, called September 6, found him suffering from pneumonia of two or three days' duration, and in serious condition. This physician had him removed to a hospital, where he died.

It appeared that on August 24 Bayne had danced on a boat, had become heated, and complained of being chilled; that on the afternoon of the 26th he had carried a heavy object, and in setting it down thought he "must have kinked his back"; and on the morning

of the 27th said the jar of his wagon going over the car track hurt his back. Physicians were heard, other than the one who originally attended him, and some were of opinion that there was no connection between the alleged injury and the pneumonia, while others asserted that the disease was directly caused by the injury. The court therefore upheld the determination of the board awarding compensation, concluding its opinion as follows:

Assuming that the court would have the right to brush aside wholly improbable expert testimony or correct the commission for not doing so, we do not feel warranted in saying that the opinion evidence favorable to claimant is wholly improbable. There is therefore a dispute of fact, which the commission has determined.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF EMPLOYMENT—EFFECT OF PREVIOUS INJURY—*Milliken v. A. Towle & Co.*, Supreme Judicial Court of Massachusetts (Jan. 8, 1914), 103 *North-eastern Reporter*, page 898.—The industrial accident board rendered a decision awarding damages in the amount of \$1,950 to Caroline Milliken as dependent of Frank T. Milliken, deceased, and the superior court of Suffolk County issued a decree in accordance with this decision. The insurance company holding the employer's risk appealed, and the decree was reversed by the supreme judicial court, on the ground that the injuries received did not fall within the classification of the statute.

Four or five years before the death of Milliken, and while employed by the same company as teamster, he had suffered a fall from his wagon, striking on his head. Three months before October 8, 1912, and also on that day, he showed evidence of lapse of memory. At 5 o'clock on the date given above he was directed to drive his wagon to the stable to be put up for the night. He wandered about, and finally left his horse, wandered into a swamp, and remained there until morning buried, except for his head, in the cold mud and water, from which experience he contracted pneumonia and died. Judge Loring, in delivering the opinion of the court to the effect that these facts did not constitute an "injury arising out of his employment," said:

The industrial accident board found: "That the loss of memory with which the employee, Milliken, was seized was not in itself a fatal disorder, and that he would not have met his death as he did but for the horse and wagon and his effort to get them to the stable."

The dependent's [claimant's] contention is that Milliken's death was caused by pneumonia brought on by his falling into the swamp and lying there all night; that, under these circumstances, falling into the swamp and lying there all night was a personal injury which caused his death.

The fact that Milliken "would not have met his death as he did but for the horse and wagon and his effort to get them to the stable"

goes no farther than to show that the personal injury suffered by Milliken was a personal injury "in the course of his employment."

The difficulty in the case arises from the provision that the personal injury must be one "arising out of" as well as one "in the course of his employment."

There is nothing in the employment of driving a wagon which makes it likely that the employee will alight from his wagon, wander to and fall into a swamp, and lie there all night. The distinction between the case at bar and a case within this clause of the act is well brought out by what is suggested by a remark of the majority of the industrial accident board. If the horse driven by Milliken had run away and Milliken had been thereby thrown out and killed, the personal injury in fact suffered in that case would have been one which from the nature of his employment would be likely to arise, and so would be one "arising out of his [the employee's] employment."

It seems plain that if Milliken's death was caused by a personal injury, it was the one which happened some four or five years before the occurrence here complained of and before the workmen's compensation act was passed.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—DISEASE—CAUSATION—*Newcomb v. Albertson*, *Supreme Court of New Jersey* (Feb. 25, 1914), 89 *Atlantic Reporter*, page 928.—William E. Albertson entered a petition against Leverett Newcomb under the workmen's compensation act. Judgment was rendered for the petitioner in the court of common pleas of Cumberland County, and the case was taken up on certiorari, when the judgment of the lower court was affirmed.

Albertson was employed as a chauffeur and sustained a fracture of the arm because of the crank of the automobile "back-firing." While under treatment in the hospital, where he went with the privity and acquiescence of the employer, an abscess of the thumb developed, caused by an unpadded splint. Ankylosis of the thumb followed, and this in turn caused injury to the first two fingers. In deciding that these injuries arose in the course of the employment, Judge Swayze, who delivered the opinion of the court, said:

Section 11 of the workmen's compensation act (P. L., p. 136) provides for compensation for personal injuries to an employee by accident arising out of and in the course of his employment. The defendant expressly confines his argument to the award of compensation for the injury to the thumb and two fingers. The only question for us is whether those injuries were due to the accident. The question is not, strictly speaking, whether the accident was the proximate cause of the ankylosis of the thumb, or whether the infection was the natural result of the accident.

An English case was then quoted, in which it was said:

It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually

happened would not have happened, and if the accident is one of the contributing causes without which the injury which actually followed would not have followed.

Continuing, the court said:

In the present case it is said that the chain of causation is broken because the infection was due to the failure of the physician to take proper precautions. There is no finding to that effect, and the evidence is not before us. We can not assume that the infection could be caused only by the negligence of the physician, and it is therefore unnecessary to decide whether such negligence would amount to such a break in the chain of causation that the employer would not be liable. We think that the trial judge was right in finding that the injury in fact resulted from the accident and in holding the employer liable.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—EFFECT OF PREEXISTING DISEASE—*Voorhees v. Smith Schoonmaker Co., Supreme Court of New Jersey (Nov. 6, 1914), 92 Atlantic Reporter, page 280.*—The facts of this case, in which the court affirmed a judgment of the court of common pleas of Somerset County in favor of the widow of a deceased employee, are given in the portion of the opinion of Judge Parker, who spoke for the court, quoted below:

The principal question raised is whether the court of common pleas was justified in finding that the death of Ira Voorhees, the employee, resulted from an accident arising out of and in the course of his employment. The deceased, a man of middle age or over, worked in a woodworking shop of prosecutor, and at the time of the seizure just preceding his death was working at a task of furrowing 16 posts, each six inches square and weighing about 100 pounds apiece. To do this he had to get each post up on the table of the furrowing machine and push it forward against the knives by body pressure, which was exerted by pushing his abdomen forcibly against the end of the post. Each post had to be run through twice. After Voorhees had finished 13 of the posts he sat down, evidently in great pain, and shortly afterward sent for a doctor, who had him taken home, where he died 3 days later. He vomited blood and passed bloody stools, and the doctor pronounced the trouble internal hemorrhage. After death the undertaker, as he testified, found the body in such condition that he had it buried a day earlier than originally intended. It was in evidence that there was a large bruise on the abdomen where the pressure had been exerted on the ends of the posts.

The effort of the defense was to show that death was produced by a rupture resulting from cancer. The family refused to consent to an autopsy, but that was their right. It must be conceded that much of the evidence points to cancer and an internal rupture of some kind. But it was quite plain, and the trial court was fully justified in finding, that the rupture occurred while the deceased was in the very act of doing some unusually heavy work. So that, even if deceased was suffering from internal cancer, it was quite

within the province of the court to find that the proximate cause of death was the unusual and forcible pressure on parts weakened by disease, which but for the unusual strain would have held out for a considerable period.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—EVIDENCE OF CAUSE OF DEATH—*Muzik v. Erie Railroad Co., Supreme Court of New Jersey (Jan. 9, 1914), 89 Atlantic Reporter, page 248.*—This case under the workmen's compensation act rested on the question as to whether the fact that the death of the employee arose in the course of his employment must be proved by direct evidence, or would be inferred from the circumstances which existed in the case.

The decree of the lower court was reversed for correction in minor particulars, but the effect of the decision was to uphold the finding in favor of the plaintiff. Judge Voorhees, who spoke for the court, said:

The first point made by the defendant is that there is no evidence that Muzik's death was caused by an accident in the course of his employment. It is true that no direct evidence of these facts was produced. The man was found after the train had gone out, some 3 or 4 feet from the railroad, lying with his feet toward the track, with an injury in his head, and died shortly; the case being one of a broken neck.

The Bergen County court of common pleas found that the deceased came to his death by accident, while in the railroad's employ, and in the course of it. I do not think that we can question this finding. The facts shown clearly indicate that the deceased was struck by the train after he had given the waybills, in pursuance of his duty as such employee, to the train agent, and this, of course, would be while in the course of his employment.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—REVIEW BY COURTS—*De Constantin v. Public Service Commission, Supreme Court of Appeals of West Virginia (Sept. 29, 1914), 83 South-eastern Reporter, page 88.*—The plaintiff, De Constantin, was the acting royal consul of Italy, and made application to the court for an order requiring the public service commission to allow a rejected claim for compensation on behalf of the dependents of Giuseppe Zippi.

Zippi was killed by a train on the main line of the Baltimore & Ohio Railroad. He was in the employ of a firm engaged in construction work on a portion of the road. While his death occurred a few minutes before the time for him to begin work in the morning, the evidence did not show that the main line where it happened was the only or even the proper route for access to his place of work, and the commission rejected the claim on the ground that the injury was not in the course of employment. The court sustained this view and

refused the order applied for. Its conclusions as to the two questions involved are shown in the following syllabus prepared by the court:

The jurisdiction to review acts of the public service commission, respecting the administration of the workmen's compensation fund, conferred upon the supreme court of appeals by section 43 of chapter 10 of the Acts of 1913, is original, not appellate.

An injury incurred by a workman in the course of his travel to his place of work, and not on the premises of the employer, does not give right to participation in such fund, unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and returning from his work.

WORKMEN'S COMPENSATION—INJURY IN COURSE OF EMPLOYMENT—USE OF FORBIDDEN APPLIANCE—*Reimers v. Proctor Publishing Co., Supreme Court of New Jersey (Feb. 25, 1914), 89 Atlantic Reporter, page 931.*—The father of Gustave A. Reimers entered a petition under the compensation act and secured a judgment in his favor in the court of common pleas of Hudson County. This was reversed by the supreme court. The son had been injured while using an automobile in distributing newspapers, the testimony showing that he had been expressly forbidden to use the same. As to this Judge Swayze in delivering the opinion said:

The principal question in the case for us is whether there was evidence justifying an inference that the death was by accident arising out of and in the course of the employment. There was evidence justifying an inference that the decedent was employed by the defendant as a general utility man, and that among his duties was the distribution of newspapers. He had at one time used an automobile of the defendant, and had met with an accident which damaged the machine. The defendant then borrowed an automobile, and its president and one of his sons, who was in its employ, both forbade decedent to use the car. Nevertheless he used it frequently to distribute the newspapers. There is no evidence that anyone except the president had authority to authorize its use; but the use was so frequent and so public that, if there was nothing more in the case, the trial judge would have been justified in finding that the decedent was authorized to use it notwithstanding the prohibition. The difficulty is that both the president and his son testified that the decedent had been told not to use the car on the day the present accident happened. The son in particular told him, just before he went out, to let the car alone. There is no conflicting evidence on this point, and, if these witnesses are to be believed, the decedent took the car on the occasion when the accident happened in disobedience of express orders just received. If there was authority to use it before, there was a revocation.

WORKMEN'S COMPENSATION—INJURY OF EMPLOYEE BY NEGLIGENCE OF THIRD PARTY—*Meese et al. v. Northern Pacific Railway Co.,*

United States Circuit Court of Appeals, Ninth Circuit (Feb. 16, 1914), 211 Federal Reporter, page 254.—This was an action to recover damages for the death of Benjamin Meese. Meese was an employee of a brewing company, and was engaged at the time of the accident which caused his death in placing Government stamps upon barrels which were being rolled down skids and placed on cars on a siding of the railway alongside his employer's plant. The railway company caused a train to be run upon the siding against the car on which he was standing, causing several barrels to roll upon him. It was not contended that the agents of the railway company were not negligent, but the contention was that the wife and children must recover, if at all, under the workmen's compensation act of Washington. The court decided that the statute providing for recovery for death caused by negligence was not repealed by the compensation act, as far as third persons are concerned in such cases, as appears from the following extracts from the opinion, which was delivered by Judge Morrow:

With respect to the declaration of policy contained in the first section of the act, it is to be noticed that it is specifically directed against "the common-law system governing the remedy of workmen against employers for injuries in hazardous work." The present action is not one arising under the common-law system, and it is not against the employer of the decedent. The plaintiffs in error, as the wife and children of the decedent, had no right of action against the defendant at common law, whether the defendant was an employer or a third person not an employer. Their right of action was purely statutory, and is based upon sections 183 and 194 of the [Rem. & Bal.] Codes and Statutes of Washington.

The question here is: Have the plaintiffs in error a remedy under the prior statute? They have if that statute has not been repealed by the compensation act. It is not claimed that it has been repealed by that act in express terms. Can it be said that it has been repealed by implication? It is plain that it has not, when we consider that by the compensation act it is provided that if a workman is injured away from the plant of his employer by the negligence or wrong of another not in the same employ, and the injury results in the death of the workman, his widow, children, or dependents may elect whether to take under the compensation act or seek a remedy against such other. What that remedy against the other is is clearly indicated by the remainder of the section pointing to a right of action under the prior statute.

WORKMEN'S COMPENSATION—INJURY OF EMPLOYEE BY NEGLIGENCE OF THIRD PARTY—SETTLEMENT—SEPARATE CLAIM AGAINST EMPLOYER—*Newark Paving Co. v. Klotz, Supreme Court of New Jersey (Feb. 24, 1914), 91 Atlantic Reporter, page 91.*—Hattie Klotz, petitioner in this proceeding for compensation, was administratrix of a workman who had been employed by the defendant company.

Klotz was employed by the company to wheel stone and cement to a concrete mixer at work on the repavement of a street. He went to this work at 7 o'clock in the morning, but, when he arrived there, it was found that, owing to the pipes of the concrete mixer having been frozen, no work could be done until this had been repaired. Before the mixer was fixed so as to permit the resumption of work, Mr. Klotz, while fixing up his wheelbarrow, was struck by a street railway car and killed.

Prior to the trial in this case, the petitioner received \$800 from the street railway company, and released, by a release under seal, that corporation from liability.

Having held that the evidence justified a finding that Klotz's death was due to an accident arising out of and in the course of his employment, the court further held that the settlement with the corporation whose wrong caused death did not bar the recovery of compensation, and that the employer had not a right by way of subrogation to the claim of the employee against that corporation. The judgment of the court of common pleas of Essex County in favor of the petitioner was affirmed.

The reasons for this conclusion are set forth in the following quotation from the opinion of the court, which was delivered by Judge Swayze:

If the statutory compensations were subject to deductions by reason of payments made by a third person, the tort-feasor, to the person injured or to his dependents, in satisfaction of the liability for the tort, this object of the statute [of a fixed amount of compensation for a definite period] would be thwarted, and in effect the commutation to a lump sum would take place without any order of the court and at the will of the injured party or his representatives. If, on the other hand, the employer were allowed to recover of the tort-feasor by action in the name of the employee or his representative, he would be able to recover in advance of payments by him and at a time when the extent of his own liability could not be ascertained. These considerations suffice to show that the right to compensation under the statute and the right to recover damages of the tort-feasor are of so different a character that the rule of law appealed to by the prosecutor is inapplicable. The release, therefore, of the claim against the street railway could not be a bar to the right to compensation under the statute.

It was conceded that this conclusion made it possible for an injured workman to secure double compensation—a difficulty that was sought to be met by a subsequent amendment. There is also an amendment to the original act which subrogates the employer to the rights of the injured workman to an action against the negligent third person, or releases the employer from liability if an adequate compensation has been recovered by the injured man from such third

person. This amendment, however, was not in effect at the time of the injury, and was held by the court not to furnish a guide for its rulings in the present case.

WORKMEN'S COMPENSATION—MEDICAL AND HOSPITAL SERVICES—*In re Panasuk, Supreme Judicial Court of Massachusetts (May 21, 1914), 105 Northeastern Reporter, page 368.*—From a decree in the superior court of Suffolk County in favor of the employee, Theodore John Panasuk, in a proceeding under the workmen's compensation act, the insurer, the American Mutual Liability Insurance Co., appealed, the decree of the lower court being affirmed.

The Massachusetts compensation act provides for the furnishing by the insuring association, during the first two weeks after injury, of medical and hospital services and medicines. The employee concerned was at work for the Taunton Wool Stock Co., and a splinter became embedded in his hand, causing an abscess and necessitating a surgical operation and several dressings thereafter. The industrial accident board found that the employee was an illiterate foreigner, unable to read, write, speak, or understand the English language. A notice, signed by the Taunton Dye Works & Bleachery Co., a separate corporation from that for which the employee worked, was posted near his working place, giving the name of the insurance association and the names of "Doctors to whom to go in case of accident and receive free medical attendance." The employee reported his injury to the foreman, who did not advise him regarding his right to medical attendance, and he went to a physician, who found need of an immediate operation. The physician wrote to the superintendent of the employer, which did not then furnish any attendance. It was held that the industrial accident board had jurisdiction to consider the question of the right of the employee to compensation for the amount paid by him for medical attendance; and that the duty of the association to "furnish" medical treatment means something more than a mere passive readiness to provide it if called for; rather, an active effort to render the necessary aid.

WORKMEN'S COMPENSATION—MEDICAL AND SURGICAL TREATMENT—REFUSAL TO PERMIT OPERATION—*Jendrus v. Detroit Steel Products Co. et al., Supreme Court of Michigan (Dec. 20, 1913), 144 Northwestern Reporter, page 563.*—Helen Jendrus brought suit against the company named and the insurance company which carried its compensation risks for the death of her husband, Joseph Jendrus. A finding for the claimant for the amount of compensation provided for death by injury, made by the arbitration committee,

was affirmed by the industrial accident board, and on certiorari it was again affirmed by the supreme court. The defendants' claim was that death was caused not by the accident, but by the refusal of the employee to allow an operation to be performed when first proposed, and that the refusal of medical and surgical treatment offered by the employer barred him from compensation.

The opinion of the supreme court, delivered by Judge Stone, quotes the opinion and finding of facts by the industrial accident board as follows:

In this case the deceased, Joseph Jendrus, was injured by a severe blow on the abdomen. The doctors attending the injured man diagnosed the injury as a probable rupture of the intestine, and advised an operation. The accident occurred about 1 o'clock in the afternoon of February 14. At about 8 or 8.30 in the evening the doctors sought to operate on the injured man. It appears that he could not talk English, and communication was had with him through an interpreter. The injured man shook his head, indicating a refusal to be operated on. The matter of an operation was again brought up by the doctors on the following morning, February 15. Jendrus, at that time, refused to submit to the operation, but consented at about 11.30 a. m. The operation was performed about 1.30 p. m. on February 15. It seems that during the operation the patient vomited, and the vomit was drawn into the lungs, causing pneumonia, and resulting in his death a few days later. The operation disclosed a rupture of the intestines which was not sutured, and the post-mortem examination showed the same to be in process of healing at the time of death. All communication with the deceased after the injury was through an interpreter. The board is of the opinion that the refusal to be operated on when first requested and the further action of deceased in delaying consent to the operation until nearly noon on the day following the accident was not so unreasonable and persistent as to defeat the claim for compensation in this case. He did submit to the operation after being convinced that it was absolutely necessary.

The opinion of Judge Stone concludes:

In none of the cases cited by appellants' counsel was the operation anything more than a minor operation for a trifling injury. We think the cases clearly distinguishable from the instant case, which involved a major operation of a serious nature. None of the testimony in the case goes to the length of showing that Jendrus' life would have been saved had the operation been submitted to at 8 o'clock on the evening of February 14, which was the first time that Dr. Hutchings had reached the conclusion that an operation was necessary. Peritonitis had already set in, and the vomiting had commenced, and vomitus of a fecal nature was then being expelled. That it was the injury which caused the peritonitis is not questioned; that it was the peritonitis which caused the vomiting of fecal matter is not questioned; that it was the taking of fecal matter into the lungs which caused the pneumonia is claimed by all of the surgeons who testified. There is testimony that he might have recovered without any operation, although that result could not have been reasonably

expected. Under all the circumstances of the case, including the fact that Jendrus was a foreigner, unable to speak or understand the English language, that he was suffering great pain on the evening of the 14th, that he was unacquainted with his surroundings, and that he did consent to, and did submit to, an operation within 15 or 16 hours after it was first found necessary, in the judgment of the surgeons, we can not hold, as matter of law, that the conduct of Jendrus was so unreasonable and persistent as to defeat the claim for compensation by his widow. Neither can we hold that Jendrus by his conduct in the premises in causing a delay in the operation was guilty of intentional and willful misconduct. We can not say, as matter of law, that the industrial accident board erred in its conclusions of law in affirming the action of the committee on arbitration. No other questions of law are presented by the record.

WORKMEN'S COMPENSATION—NONRESIDENT ALIEN BENEFICIARIES—INJURIES CAUSING DEATH—*Gregutis v. Waclark Wire Works*, Supreme Court of New Jersey (Apr. 14, 1914), 91 Atlantic Reporter, page 98.—This was an action by Eva Gregutis as administratrix to recover damages for the death of a workman who left dependents resident in Russia, but none in the United States. It was conceded that there was no right of recovery under the State compensation act, since nonresident beneficiaries are excluded therefrom. The question was raised whether or not the act of 1848 allowing recovery for injuries causing death was applicable in the present instance, the court (a single judge sitting) ruling that it was not. The opinion of Judge Bergen is in part as follows:

That such nonresident aliens have a right of action under certain conditions is settled in this State (*Cetofonte v. Camden Coke Co.*, 78 N. J. Law, 662, 75 Atl. 913, [Bul. No. 90, p. 833]), but such right depends upon the condition that a party, injured through the negligence of the defendant, would, if death had not ensued, be entitled to maintain an action in respect thereof (P. L. 1848, p. 151; 2 Comp. Stat. 1910, p. 1907, sec. 7).

I think it must be conceded that, if the deceased had suffered an injury, not resulting in death, he would have been bound by the compensation provided for in the act of 1911 (P. L., p. 134), and could not have brought suit for his injuries in disregard of that act, and, if he could not, then it would follow that the condition upon which a right of action is given to the personal representative of a deceased person is not present. In addition to this, the act of 1911 covers all cases of death, and compensation therefor, where the contract of the employee is subject to section 2 of the act, and to that extent the act of 1848 is inconsistent with it, as the later act provided a different procedure and rule of damages, and, being inconsistent, it can not be applied to the class of cases enumerated in the statute of 1911, for that act repeals all inconsistent legislation.

The conclusion I have reached is that, where an employee contracts to work under section 2 of the employers' liability act, the damages to be paid by the employer in case of death are limited by that act,

and that an action by next of kin can not, in such case, be maintained in disregard of the act. Compensation is given, in lieu of damages, to dependents, and not to next of kin as such. The power of the legislature to give or withhold a right of action in such case, and to declare to whom, and in what amount, compensation shall be made, can not be doubted.

This complaint admits an employment governed by the second section of the statute of 1911, but avers that because, under that act, nonresident dependents are excluded from compensation, it does not apply to them, although it would apply to the compensation of the employee if he were seeking compensation for injuries on his own behalf. This does not state a cause of action in the present state of the law on this subject.

The case was subsequently taken to the court of errors and appeals (92 Atlantic Reporter, p. 354), in which the judgment of the supreme court was affirmed, the court stating that the "death act" (2 Comp. St. 1910, p. 1907) limited recovery to cases where the decedent would, if death had not ensued, have been entitled to maintain an action. It cited paragraph 7 (sec. 2) of the workmen's compensation act of 1911, which provides that when an employer and an employee shall by agreement, either express or implied, accept the provisions of the act, compensation for personal injuries or death shall be made in accordance with the provisions of the act; the next paragraph provides that this agreement shall be a surrender of all rights to any other method of settlement, and shall bind personal representatives, widow, and next of kin. Continuing, Judge Trenchard, who delivered the opinion of this court, said:

By force of these provisions, therefore, the decedent, if he had suffered an injury not resulting in death, would have been limited to the recovery of the compensation provided for in section 2 and by the procedure and in the forum provided in the workmen's compensation act, and he could not have brought suit for his injury in disregard of that act. It follows, therefore, that the condition upon which a right of action is given to the personal representatives of a deceased person by the death act is not present in the case at bar.

Whether, in a proceeding begun under the workmen's compensation act in the common pleas court, the administratrix could recover under paragraph 12 (2), "expenses of last sickness and burial not exceeding two hundred dollars," upon the theory that there were "no dependents," is a question we have not considered, since it is not before us.

The judgment below will be affirmed, with costs.

WORKMEN'S COMPENSATION—PERMANENT INJURY—AGED EMPLOYEE—AMOUNT OF COMPENSATION—*Bateman Manufacturing Co. v. Smith*, Supreme Court of New Jersey (Feb. 25, 1914), 89 Atlantic Reporter, page 979.—James E. Smith was injured, while employed by the company named, by a radiator falling and crushing his right

leg. He was 73 years old and, on account of his age and the inability of the bones to knit, this accident caused permanent disability in his occupation as plumber, which requires standing.

The judge of the court of common pleas of Camden County awarded compensation for total disability or for 400 weeks. This award was reversed by the supreme court and compensation awarded for 175 weeks, the compensation specified for loss of a leg. In rendering this decision the court said that the award must be limited by the schedule contained in paragraph 11 of section 2 of the act and that the age or health of the employee, although causing an accident to have a different effect, does not affect the amount of compensation.

WORKMEN'S COMPENSATION—PERMANENT INJURY—DEATH—AGED EMPLOYEES—*City of Milwaukee v. Ritzow et al.*, Supreme Court of Wisconsin (Oct. 6, 1914), 106 Northwestern Reporter, page 480.—The Wisconsin workmen's compensation act provides that in case of the permanent injury of an employee who is over 55 years of age the compensation shall be reduced by 5 per cent, if over 60 years of age by 10 per cent, and if over 65 years of age by 15 per cent. Other subdivisions provide that, in case of the death of an injured employee, a sum equal to the compensation for permanent injury or disability shall be paid as benefits to the surviving dependents of the employee. In the present case the employee, a man 80 years of age, was killed in the course of his employment, and the industrial commission awarded his widow an amount equal to four times his last average annual earnings, which is the amount provided for permanent disability, without making any 15 per cent reduction. The circuit court of Dane County affirmed this award, and the city appealed to the supreme court. The latter court held that the term "permanent injury" was used in the ordinary sense, and did not include injury resulting in death, in spite of the fact that the reason for the reduction in such cases might be stronger than in cases where the employee survives with permanent disability. The full award was therefore affirmed, two judges dissenting, the court saying that it was so easy for the legislature to specify if it had desired to reduce death benefits as well as those for permanent disability that its failure to do so inclined the court to the view that such was not its intention even though the "reason of the statute as to reduction of compensation applies stronger to the condition not included in its strict letter than to that which is."

WORKMEN'S COMPENSATION—PERMANENT TOTAL OR PARTIAL DISABILITY—LOSS OF FINGERS—AMOUNT OF BENEFITS—*Sinnes v. Daggett et al.*, Supreme Court of Washington (July 30, 1914), 142 Pacific

Reporter, page 5.—The industrial insurance commission awarded compensation for partial disability in the amount of \$1,200, in addition to \$45 for loss of time, to Thomas Sinnes, for the loss of several fingers on each hand. He appealed, the superior court of King County affirmed the award, and he again appealed, contending that his disability was total and permanent.

The accident occurred while he was in the employ of the Moore Logging Co. The compensation act provides that permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the workman from performing any work at any gainful occupation. It also states that permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, etc.; and that for permanent partial disability the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, and not in any case to exceed the sum of \$1,500.

The supreme court held that the questions involved were questions of law; that the injury was within the definition of permanent partial disability, and there was no reason for the granting of a jury trial; and that the amount of compensation was within the discretion of the commissioners, limited only by the prescribed maximum of \$1,500. The action of the court below in dismissing the appeal was therefore affirmed, and the award of \$1,200 allowed to stand as originally made.

WORKMEN'S COMPENSATION—PERSONAL INJURY—OCCUPATIONAL DISEASE—LEAD POISONING—*Adams v. Acme White Lead & Color Works, Supreme Court of Michigan (July 25, 1914), 148 Northwestern Reporter, page 485.*—Sarah E. Adams made claim against the defendant named for compensation. The industrial accident board entered an award in her favor, and the defendant brought certiorari, when the decision was reversed. The husband of the claimant, Augustus Adams, left work in the defendant's plant at the closing hour May 29, 1913, and was unable to resume work, dying on June 27, 1913. He had been employed since the previous December at work which brought him in contact with red lead.

The industrial accident board held that the language of the Michigan act, which specifies, "a personal injury arising out of and in the course of his employment," omitting the words "by accident" originally found in the English statute, was broad enough to include occupational diseases. It also found that it would not be justified in holding the part of the act referred to invalid on constitutional grounds. In discussing the question whether the act includes and

covers occupational diseases, the supreme court held that an occupational disease is not an accident, since it is expected that, in spite of the greatest precaution, a certain percentage of employees will contract such diseases; that the occurrence of such a disease therefore lacks the element of being unforeseen and unexpected, which is characteristic of an accident. The purpose of the act is taken up, and it is shown that it is intended to provide compensation for injuries, either directly or by suit against employers not accepting the act, whether or not the injury resulted from an employee's negligence or the negligence of a fellow servant, and without regard to any assumption of risks. Since no action at all was allowed at common law for occupational diseases, this was taken as an indication that the words "personal injury" were intended to mean injury by accident. The requirement that the employer shall make a report within 10 days of the happening of the accident resulting in a personal injury was shown to tend in the same direction, since it may be in many cases impossible for the employer to know that disability is the result of an occupational disease resulting from the employment within that length of time.

The Massachusetts decisions (*In re Hurle*, 217 Mass. 223, 104 N. E. 336, [p. 260]; *Johnson v. London Accident & Guarantee Co.*, 104 N. E. 735, [p. 259]), which hold occupational diseases to be included under the law of that State were distinguished, on the ground that the word "injury" is used throughout the act, in the place of "accident" in the Michigan act; and a decision in New Jersey (*Hichens v. Magnus Metal Co.*, N. J. Law Journal (Com. Pl. June 25, 1912), p. 327), is cited as upholding the present decision not to consider such diseases as included.

The court further held that if the legislature intended to include occupational diseases, that part would be unconstitutional, as violating the provision of the constitution that "No law shall embrace more than one object, which shall be expressed in its title." The controlling words in the title of the workmen's compensation act are said to be "providing compensation for accidental injury to or death of employees," which language it was held would not allow to be included in the body of the act provisions for compensation for occupational disease.

WORKMEN'S COMPENSATION—PERSONAL INJURY—OCCUPATIONAL DISEASE—LEAD POISONING—*Johnson v. London Guarantee & Accident Co. (Ltd.)*, Supreme Judicial Court of Massachusetts (Apr. 4, 1914), 104 *Northeastern Reporter*, page 735.—The industrial accident board found that the employee, who was 72 years of age, and had been employed at lead grinding for 20 years, had been incapacitated by lead poisoning since March 13, 1913, and the superior court of Suf-

folk County issued a decree awarding him damages. The company appealed. Judge Crosby, in delivering the opinion of the court affirming the decree of the court below, said:

The main inquiries raised by the appeal are: (1) Has the employee suffered a personal injury within the meaning of the act? (2) If so, what was the date of the injury? (3) If the date of the injury was subsequent to July 1, 1912 [the date of taking effect of the amended act], did it arise out of and in the course of his employment?

Under the act, "personal injury" is not limited to injuries caused by external violence, physical force, or as the result of accident in the sense in which that word is commonly used and understood, but under the statute is to be given a much broader and more liberal meaning, and includes any bodily injury.

Aside from the decisions under the English act which provides for compensation for "personal injuries by accident," it is clear that "personal injury" under our act includes any injury or disease which arises out of and in the course of the employment, which causes incapacity for work and thereby impairs the ability of the employee for earning wages. The case of *Hood & Sons v. Maryland Casualty Co.*, 206 Mass. 223, 92 N. E. 329, is decisive of the case at bar. In that case it was held that for a person to become infected with glanders was to suffer a bodily injury by accident.

This question recently has been considered fully in *Hurle's Case*, 104 N. E. 336 [see p. 260], which decided that an employee having suffered an injury which resulted in total blindness caused by absorbing poison in the course of his employment, which incapacitated him from labor, had suffered a "personal injury" within the meaning of the act.

In view of the finding of the board that Johnson had suffered from lead poisoning fourteen years before and had had no recurrence of the disease until he became incapacitated for work on or about March 13, 1913, and the further finding that there had been "an absorption of lead poisoning since July 1, 1912, and that the date when the accumulated effect of this poisoning manifested itself, and Johnson became sick and unable to work, was the date of the injury," we are of opinion that the board was warranted in finding that the injury was received when he became sick and unable to perform labor. Until then he had received no "personal injury," although doubtless the previous absorption of lead into his system since July 1, 1912, finally produced the condition which terminated in the injury. [Citing a number of British cases.]

As the physical incapacity of the employee for work has been found by the board to have been caused by the gradual absorption of poison into his system subsequent to July 1, 1912, resulting in personal injury on or about March 13, 1913, there seems to be no reasonable conclusion other than that such injury arose out of and in the course of his employment. (*Hurle's Case*, and cases cited.)

WORKMEN'S COMPENSATION—PERSONAL INJURY—OCCUPATIONAL DISEASE—OPTIC NEURITIS—*In re Hurle*, Supreme Judicial Court of Massachusetts (Feb. 28, 1914), 104 Northeastern Reporter, page 336.—William Hurle made claim against the Plymouth Cordage Co., em-

ployer, and the American Mutual Liability Insurance Co., insurer. The insurer appealed from a decree of the superior court of Suffolk County, made on the findings and decision of the industrial accident board ordering the insurer to pay certain amounts to the employee, and the supreme judicial court affirmed this decree. Judge Rugg in delivering the opinion of the court states the facts of the case and discusses the point on which the decision hinges, in part, as follows:

This is a case under the workmen's compensation act. The facts as found by the industrial accident board are that the employee is totally incapacitated for work by personal injury which arose out of and in course of his employment, and which caused total loss of vision in both eyes, and which resulted from an acute attack of optic neuritis induced by poisonous coal tar gases. His work was about furnaces for producing gas by the burning of coal, in the top of which were several holes through which after opening a cover he could watch the fire. It was his duty to see that the furnaces were supplied with coal and burning evenly and to prevent incandescent spots caused by the burning by forced draft. It was necessary for him to open one or another of these holes about 70 times a day, and whenever these holes were opened poisonous gases were given forth. The inhalation of these caused his blindness.

The question to be decided is whether this was a "personal injury arising out of and in the course of his employment" within the meaning of those words in Stat. 1911, ch. 751, p. 2, sec. 1. Unquestionably it arose out of and in the course of his employment. The only point of difficulty is whether it is a "personal injury."

The words "personal injury" have been given in many connections a comprehensive definition. They are broad enough to include the husband's right to recover for damage sustained by bodily harm to his wife, the alienation of a husband's affections, the seduction of one's daughter and other kindred tortious acts.

At common law the incurring of a disease or harm to health is such a personal wrong as to warrant a recovery if the other elements of liability for tort are present. *Hunt v. Lowell Gas Light Co.*, 8 Allen 169, 85 Am. Dec. 697; *Allen v. Boston*, 159 Mass. 324, 34 N. E. 519; *Deisenreiter v. Malting Co.*, 92 Wis. 164, 66 N. W. 112; *Wagner v. Chemical Co.*, 147 Pa. 475, 23 Atl. 772 [and other cases cited].

The English workmen's compensation act affords compensation only where the workman receives "personal injury by accident." It adds to the personal injury alone required by our act the element of accident. Yet it has been held frequently that disease induced by accidental means was ground for recovery.

The opinion then refers to the case of *Hood & Sons v. Maryland Casualty Co.*, 206 Mass. 223, 92 N. E. 329, in which it was decided that infection from glanders while cleaning a stable was included in the phrase "bodily injuries accidentally suffered," and concludes as follows:

There is nothing in the act which leads to the conclusion that "personal injuries" was there used in a narrow or restricted sense.

The provisions as to notice of the injury (part 2, secs. 15 to 18, both inclusive, as amended by Stat. 1912, ch. 172, and ch. 571, sec. 3) indicate a purpose that information shall be given as to the time, place, and cause of the injury as soon as practicable after it is suffered. But this requirement can be complied with in the case of an injury caused by the inhalation of a poisonous gas producing such results as here are disclosed, as well as in the case of a blow upon the body. An argument may be drawn from the provisions of part 3, sec. 18, as amended by Stat. 1913, ch. 746, sec. 1, in favor of a liberal interpretation of "personal injuries." By the section as originally enacted the duty was imposed upon every employer to keep a record of all injuries, but he was required to make return to the industrial accident board only of "an accident resulting in a personal injury." By the amendment, which of course has no effect upon the legal rights of the parties in the present action, but which may be resorted to for discovery of legislative intention, the employer is required to make return of "the occurrence of an injury" and to state "the day and hour of any accident causing the injury." If these words are accurately used, a distinction is drawn between the injury and the accident causing the injury. The authority conferred upon the board of directors of the Massachusetts Employees' Insurance Association by part 4, sec. 18, is to "make and enforce reasonable rules and regulations for the prevention of injuries" and not for the prevention of accidents. See also Stat. 1913, ch. 813. The name "industrial accident board," which is the administrative body created by part 3, is a mere title and can not fairly be treated as restrictive of its duties.

The difference between the English and Massachusetts acts in the omission of the words "by accident" from our act, which occur in the English act as characterizing personal injuries, is significant that the element of accident was not intended to be imported into our act. The noxious vapors which caused the bodily harm in this case were the direct production of the employer. The nature of the workman's labor was such that they were bound to be thrust in his face. The resulting injury is direct. If the gas had exploded within the furnace and thrown pieces of cherry hot coal through the holes into the workman's eyes, without question he would have been entitled to compensation. Indeed there probably would have been common-law liability in such case. *Dulligan v. Barber Asphalt Co.*, 201 Mass. 227, 87 N. E. 567. There appears to be no sound distinction in principle between such case and gas escaping through the holes and striking him in the face whereby through inhalation the vision is destroyed. The learned counsel for the insurer in his brief has made an exhaustive and ingenious analysis of the entire act touching the words "injury" or "injuries," and has sought to demonstrate that it can not apply to an injury such as that sustained in the case at bar. But the argument is not convincing. It might be decisive if accident had been the statutory word. It is true that in interpreting a statute words should be construed in their ordinary sense. Injury, however, is usually employed as an inclusive word. The fact remains that the word "injury" and not "accident" was employed by the legislature throughout this act. It would not be accurate but lax to treat the act as if it referred merely to accidents. *Warner v. Couchman*, [1912] A. C. 35, at page 38.

WORKMEN'S COMPENSATION—RAILROAD EMPLOYEES—ELECTION—
Connole v. Norfolk & Western Railway Co., United States District Court, Southern District of Ohio (Sept. 2, 1914), 216 Federal Reporter, page 823.—T. J. Connole brought action against the railway company named. The defendant company moved to strike out a paragraph of the petition in which the allegation was made that the company was his employer as defined in the Ohio workmen's compensation or State insurance act, and had not complied with the provisions of the act. The compensation act gives a right of action to the employee in cases where an employer under the act is in default on premiums to the State insurance fund, the employer being in such action deprived of the defenses of fellow-service, contributory negligence, and assumed risk.

The defendant's claim is stated as follows in the opinion delivered by Judge Sater:

The defendant's position is that, even if both were engaged in purely intrastate business at the time plaintiff was injured, the defendant, being also an interstate carrier engaged in interstate commerce, is not amenable to the provisions of the Ohio act unless it and some, at least, of its workmen working only in this State, with the approval of the State liability board of awards, had voluntarily accepted the provisions of such act by filing their written acceptances thereof with such board, and unless such acceptances had also been approved by such board; and that in that event the defendant would be subject to the provisions of the act for the period only for which the premiums called for by the act had been paid.

The earlier portions of section 51 make the act applicable to employers and employees engaged in interstate or foreign commerce (notwithstanding any Federal act affecting them) to the extent only that both are engaged in intrastate work alone at the time of the happening of an injury to an employee; that is to say, the work must be clearly separable and distinguishable from interstate or foreign commerce to bring the employer and its injured employee within the terms of the statute. After thus making the act applicable to such persons, the section further provides:

"And then only [shall the provisions of the act apply to them] when such employer and any of his workmen working only in this State, with the approval of the State liability board of awards, and so far as not forbidden by the act of Congress, voluntarily accept the provisions of this act by filing written acceptances, which, when filed with and approved by the board shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included within its terms, during the period or periods for which the premiums herein provided have been paid."

The court sustained the defendant's contention, interpreting section 51 of the act as excluding railroad companies and their employees who are engaged in both intrastate and interstate commerce except when they have made active election to come within the provisions of the act, and ordering the paragraph of the petition under consideration to be stricken out.

WORKMEN'S COMPENSATION—REVIEW OF DECISIONS OF INDUSTRIAL BOARD—CERTIORARI—*Courter v. Simpson Construction Co., Supreme Court of Illinois (Oct. 6, 1914), 106 Northeastern Reporter, page 350.*—Mrs. Amanda E. Courter instituted a proceeding before the industrial board, as guardian of a minor son, for compensation for the death of her divorced husband, George B. Courter, who stepped upon a rusty nail while in the employment of the defendant company and died a few days later as a result of the injury. The industrial commission awarded a weekly sum of \$8.41, one-half the wages of the deceased, for 416 weeks, to be paid to the guardian until the son became of age, and afterwards to himself. The defendant brought certiorari for a review of the decision. The act attempted to make the decisions of the board reviewable by the supreme court on certiorari, but the court held that it could not assume this jurisdiction, the provision of the act being invalid as violating the clause of the constitution limiting the original jurisdiction of the supreme court to certain classes of writs, of which certiorari is not one. It held, however, that the legislature had no constitutional authority to take away the right of review by the courts, since such action would be violative of the "due process of law" provision of the constitution. It held, further, that the question whether the board acted illegally or without jurisdiction might be reviewed by writ of certiorari, and that this writ should issue from the circuit courts, they being the only ones having original jurisdiction over that writ.

WORKMEN'S COMPENSATION—REVIEW OF FINDINGS OF BOARD OF ARBITRATION—*In re Diaz, Supreme Judicial Court of Massachusetts (Feb. 28, 1914), 104 Northeastern Reporter, page 384.*—The industrial accident board awarded compensation to Diaz, who had been injured in an elevator accident, and the superior court of Suffolk County issued a decree in accordance with their finding. Section 11 of the workmen's compensation act of 1911, as amended by Stat. 1912, ch. 571, sec. 14, provides that a decree of the committee of arbitration awarding compensation to an injured employee shall have the same effect as though rendered in an action heard by a court, except that there shall be no appeal therefrom on questions of fact. There being no question of law raised in this case, the court determined that the finding had the same weight and effect as the verdict of a jury, and would be upheld as there was some evidence to sustain it.

WORKMEN'S COMPENSATION—RIGHT OF ACTION BY PARENT FOR LOSS OF SERVICES OF MINOR CHILD—*King v. Viscoloid Co., Supreme Judicial Court of Massachusetts (Dec. 1, 1914), 106 Northeastern*

Reporter, page 988.—The mother of a minor son injured in the employ of the company named brought action under the common law for the loss of his services. It was agreed that, even though the son had received full compensation under the law, she was entitled to recover unless this right of action was barred by the provisions of the workmen's compensation act. The court held that the minor did not and could not waive this independent right of the parent, nor had the act, either expressly or by implication, taken away this common-law right, and ordered a judgment in her favor for the sum previously agreed upon as the proper one if the plaintiff was entitled to recover.

WORKMEN'S COMPENSATION—SEAMEN—SCOPE OF LAW—*The "Fred E. Sander," United States District Court, Western District of Washington (Oct. 20, 1913), 208 Federal Reporter, page 724.*—John A. Thompson brought an action in rem in admiralty to secure damages for personal injuries alleged to have been suffered by reason of the negligence of the owners and those in charge of the schooner named, which sailed between San Francisco and Puget Sound points in Washington. He had been injured while loading and storing piling in the schooner's hold. The agent of the owners intervened as claimant for the vessel, and filed exceptions to the libel, on the ground that the workmen's compensation act of Washington abolished actions for personal injuries. Judge Neterer decided, however, that a State has no power to abolish or limit jurisdiction of courts of admiralty for maritime torts conferred by the Constitution, and consequently overruled the exceptions.

WORKMEN'S COMPENSATION—SERIOUS AND WILLFUL MISCONDUCT—*In re Nickerson, Supreme Judicial Court of Massachusetts (May 23, 1914), 105 Northeastern Reporter, page 604.*—Lester Nickerson received fatal injuries while in the employ of the Boston Woven Hose & Rubber Co., and his widow brought proceedings under the compensation act. The insurer claimed that he was guilty of serious and willful misconduct, which would bar the receipt of benefits by his dependent. Nickerson was employed to do general cleaning, painting, and whitewashing, and some of his work had to be done near machinery and shafting, which portion he had been instructed to do during the noon hour, when the machinery was shut down. About half past 11 on the day of the injury he had a conversation with the superintendent about work on a wall near shafting, and was told that that work should be done at noon, that it was about half past 11, and that the superintendent would ascertain the exact time and tell him. A few minutes later he went to work, and was caught,

his body drawn into the shafting, and injuries inflicted which caused death. The court affirmed a decree of the superior court of Suffolk County granting compensation, holding that the term "serious and willful misconduct" means something more than negligence or even gross negligence, and that disobedience to orders, to constitute such misconduct, must be deliberate, not merely a thoughtless act on the spur of the moment.

WORKMEN'S COMPENSATION—"SERVICE GROWING OUT OF AND INCIDENTAL TO EMPLOYMENT"—EMPLOYEE ON WAY TO WORK—*City of Milwaukee v. Althoff et al., Supreme Court of Wisconsin (Feb. 3, 1914), 145 Northwestern Reporter, page 238.*—The circuit court of Dane County entered a judgment affirming an award of \$2,138.11 as compensation made in favor of Minnie Althoff, on account of the death of her father, William A. Althoff. The deceased, in accordance with a city ordinance fixing the hours of labor at eight, began work at 8 a. m. and finished at 5 p. m. He was required to report to his foreman at 7.30 each morning to receive instructions as to where he was to work. On the morning of May 3, 1912, he reported thus, and on receiving his instructions proceeded toward the place where he was to work. While on the way he fell on a sidewalk and injured his knee. He died on September 21, 1912, and it was found on sufficient evidence that his death was due to the injury which he received when he fell. On appeal the supreme court affirmed the judgment, holding that the accident was within the terms of the statute, which provides that compensation shall be paid where the employee at the time of the accident is "performing service growing out of and incidental to his employment." The following is quoted from the remarks of Judge Barnes, who delivered the opinion of the court:

In the instant case, when the servant reported to his foreman and received his instructions for the day and proceeded to carry out these instructions by starting for the place where he was to work, we think the relation of master and servant commenced, and that in walking to the place of work the servant was performing a service growing out of and incidental to his employment.

WORKMEN'S COMPENSATION—SETTLEMENT WITH THIRD PARTIES LIABLE FOR INJURY—RELEASE—SEPARATE CLAIM FOR DEATH—DEDUCTION FOR WAGES—*In re Cripp, Supreme Judicial Court of Massachusetts (Feb. 27, 1914), 104 Northeastern Reporter, page 565.*—Julia Cripp, as widow of a deceased employee, secured a decree awarding compensation in the superior court of Suffolk County. Cripp was injured by coming in collision with a street railway car while driving a truck. He settled with the railway company on the

day of the injury, and gave a release. He was able to work for a time, but the injuries ultimately caused his death. The statute provides that "where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may at his option proceed either at law against the person to recover damages, or against the association for compensation under this act, but not against both, and if compensation be paid under this act the association may enforce in the name of the employee, or in its own name and for its own benefit, the liability of such other person." It was held that the employee made an election in settling with the company, the same as though he had brought suit, but that the widow's rights upon his death were distinct. As to this Judge Braley, who delivered the opinion of the court, said:

Stat. 1911, ch. 751, is not penal, but is based on the theory of compensation. Primarily its object is to provide, in place of wages which he can no longer earn, the means of subsistence for the employee injured without "serious and willful misconduct" on his part, if he survives, or for the widow, and other dependents, if death ensues either with, or without, conscious suffering. The insurer under section 6, where death results, is to pay the dependents wholly relying upon the employee's earnings for support, compensation, and by section 7, a wife living with her husband at the time of death is conclusively presumed to be such dependent. The right of recovery expressly given to the widow can not accrue until his death. Having been created for her benefit it is independent of his control, and under section 22 can be discharged only by herself where she is the sole dependent, or by those authorized to act in her behalf.

The law provided that in case of death, payments should be made to a dependent widow for a period of 300 weeks from the date of the injury. In refusing to allow a deduction for the time the employee worked after the injury and before death, the court said:

It is also urged, that the board erred in not deducting, from the period computed, the time during which the employee resumed work. The decision was right. The statute says that compensation shall accrue from the date of the injury. (Stat. 1911, ch. 751, pt. 2, sec. 6.) The only exception is that, where before death weekly payments have been made to the employee, the amount payable to dependents begins from the date of the last of such payments. We see no sufficient reason for enlarging the exception. A practical working rule easily applied has been provided, which should not be set aside even if in some cases its application may seem somewhat inequitable. If a change is deemed advisable it should come through legislative enactment.

WORKMEN'S COMPENSATION—SUBROGATION OF EMPLOYER TO
RIGHT OF ACTION AGAINST THIRD PERSON—ASSIGNMENT OF RIGHT—
McGarvey v. Independent Oil & Grease Co., Supreme Court of Wis-

consin (Apr. 9, 1914), 146 *Northwestern Reporter*, page 895.—The plaintiff, an employee of the Harley-Davidson Motor Co., while in the course of his employment, was injured by actionable negligence of the Oil & Grease Co.; the defendant. Plaintiff made claim against his employer, the motor company, for compensation, and the claim was settled. Under the workmen's compensation act this operated to transfer the employee's right of action against the Oil & Grease Co. to the motor company. The latter company for a sufficient consideration and in due form assigned this right to the employee, and he commenced action in the circuit court for Milwaukee County. The defendant demurred because the motor company was not joined as a party plaintiff. The demurrer was overruled and the defendant appealed. The supreme court affirmed the judgment of the court below, holding that such a right of action, existing in favor of the employer by subrogation, could be assigned as any other cause of action.

WORKMEN'S COMPENSATION—TOTAL AND PARTIAL DISABILITY—*Duprey v. Maryland Casualty Co.*, *Supreme Judicial Court of Massachusetts* (Nov. 4, 1914), 106 *Northeastern Reporter*, page 686.—Joseph T. Duprey brought proceedings against the casualty company as insurer of his employer, and the insurer appealed from a decree in his favor in the superior court of Suffolk County on findings of the industrial accident board. This decree was affirmed.

It was admitted that the injuries, which occurred October 12, 1912, were received in the course of employment. The employee had been paid as compensation the sum of \$7.50 per week, an amount equal to one-half his wages, during the period from the injury until June 12, 1913. The committee of arbitration decided that total disability ceased at that date and stated that Duprey agreed that payment for partial disability for two years, based on one-half the weekly wages, would be just, and it made an award accordingly. The industrial accident board found that the employee was incapacitated for all work except what he could do while seated, and that he had endeavored to find such work and was not able to do so. It therefore awarded him a weekly compensation of \$7.50, based upon total disability, from June 12, 1913.

The court held that the employee did not waive his rights by his agreement before the committee to a settlement on the basis of partial disability, and that the insurer could not now object to the admission of the evidence of a physician before the board in addition to the evidence taken by the committee, since it did not make objection before the board. It also held that the fact that the employee was a man of failing physical powers and would be incapacitated for work

in a few years did not bar him from compensation if his incapacity to work was the result of his injuries. It held finally that he was totally incapacitated for work by being unable to do any work which he could obtain, although he had a limited physical capacity for some work.

WORKMEN'S COMPENSATION—WORKMAN—CHILD UNDER 14 YEARS EMPLOYED BY FATHER IN MILL—*Hillestad et ux. v. Industrial Commission of Washington*, Supreme Court of Washington (July 14, 1914), 141 *Pacific Reporter*, page 913.—Isaac A. Hillestad and wife brought proceedings before the industrial commission for compensation for the death of their son, 13 years of age. The complainants owned and operated a shingle mill. The son was anxious to work, and his father at length promised him a packer's job when it should be vacant. In the meantime the boy went to work collecting bolts, which were scattered about up the creek 80 rods from the mill, and floating them down, and while thus employed was drowned. The industrial commission rejected the claim, but in the superior court of Whatcom County there was a verdict for the claimant, from which the commission appealed. The supreme court decided that, there being no agreement for wages or earnings, the boy was not a workman under sections 3 and 4 of the act, the former of which defines a workman as any person in the employment of an employer carrying on any of the industries scheduled in section 4, and the latter providing that in computing the pay roll the entire compensation received by every workman engaged in extrahazardous employment shall be included, whether in the form of salary, wage, piecework, profit sharing, premium, or otherwise. The court held that these provisions contemplate that there must be an actual contractual relation between the parties to work for pay of some sort. In the absence of proof of such relation, it was held that the father assumed the risk in allowing his son to work at a hazardous employment.

It was further held that a child under 14 employed in any factory, mill, etc., in violation of section 6570 of Rem. & Bal. Code is entitled to no compensation, and that this rule applies even though there is no positive connection between the violation of the law and the death of the child; and that the employment in driving bolts down the stream was employment in such a mill. It therefore reversed the decision of the court below and sustained that of the industrial commission, and ordered the claim to be dismissed.

DECISIONS UNDER COMMON LAW.

BOYCOTT—INJUNCTION—RIGHT TO STRIKE—UNFAIR LISTS—*Burnham v. Dowd*, *Supreme Judicial Court of Massachusetts* (March 31, 1914), 104 *Northeastern Reporter*, page 841.—Fred G. Burnham and others were engaged in a wholesale and retail business, part of their 'trade being in masons' supplies. Edward F. Dowd and his associates were members of a voluntary unincorporated labor union in Holyoke, Mass., this union being connected with the building trades council of the city, representing some 14 unions. These unions cooperated in the customary agreements as to working with persons not members of the unions, or doing work for "unfair" employers, or handling "unfair" material. In July, 1911, one Gauthier employed nonunion masons in some construction work in Holyoke, for which Burnham furnished materials. In August the union voted to refuse to handle any building material of any firm that furnished stock to Gauthier or to any "unfair" contractor. Notice of this action was sent to the building trades council, which in turn notified Burnham that Gauthier was "doing work contrary to laws of building trades council," and was "therefore recognized by us as being unfair," and expressed the hope that Burnham would cooperate in the matter. Burnham continued to supply material to Gauthier, and was subsequently declared unfair, notice of this declaration being sent to various owners and contractors in the city, in substance threatening to strike if they should purchase masons' supplies from the plaintiff.

This action was brought for the purpose of securing an injunction against the union and council to prevent their carrying out the threatened action, which would tend to result in the loss of their business; damages were also sought. In the superior court of Hampden County the matter was referred to a master, whose report was before the supreme judicial court for consideration. This report disclosed the facts set forth as constituting an injury to the plaintiffs' business, against which an injunction should be allowed as well as damages for injuries already caused. In sustaining these findings Judge Sheldon stated the facts as given above, and continued, saying in part:

These contractors and owners feared, and it was intended that they should fear and they were justified in fearing, that these threats would be carried out; and in consequence thereof they ceased or refrained from buying supplies of the plaintiffs, as otherwise they would have done, and the plaintiffs' sales of masons' supplies were considerably diminished and their profits lessened in consequence of these facts. This state of affairs will continue, to the serious loss and

damage of the plaintiffs, unless they shall promise not to sell to any one considered unfair by the union.

The defendants did not act from actual personal malice toward the plaintiffs; but their acts were done in pursuance of their union principles and purposes, as above stated, and without caring for the injurious consequences to the plaintiffs. Indeed these injurious consequences were anticipated and contemplated by the defendants. They did not attempt to declare or enforce any boycott against the plaintiffs, except as this is included in the acts that have been mentioned.

The defendants have no real trade dispute with the plaintiffs. No one of the members of the union is, or so far as appears ever has been, employed by the plaintiffs. The plaintiffs have not interfered or sought to interfere with the employment of any of those members, or with the rates of pay, the periods of labor, or any of the conditions of such employment. The matter that lies at the foundation of these proceedings is a dispute between the union and Gauthier. He employs or has employed nonunion labor; the defendants (including under this term all the members of the union) object to this. They have a right to say that they will do no work for him unless he will give to them all the work of their trade, that they will do all or none of his work. That was settled by our decision in *Pickett v. Walsh*, 192 Mass. 572, 78 N. E. 753 [Bul. No. 70, p. 747]. But the second point decided in *Pickett v. Walsh*, *supra*, is in our opinion decisive of the principal question raised in this case. It was there held that the members of a labor union who are employed by a contractor to do work upon a building, and who have no dispute with that contractor as to work which they or their fellows are doing for him, can not lawfully strike against him for the mere reason that he is doing work and employing some of their fellows upon another building upon which nonunion men are employed to do like work, not by him, but by the owner, of that building. The language and reasoning of that decision are applicable here. The reason of the decision was that, as the court said, such a strike "has an element in it like that in a sympathetic strike, in a boycott and in a blacklisting, namely: It is a refusal to work for A., with whom the strikers have no dispute, because A. works for B., with whom the strikers have a dispute, for the purpose of forcing A. to force B. to yield to the strikers' demands." So in the case at bar, the threat of the defendants was to strike against owners and contractors, with whom the defendants had no dispute, for the purpose of forcing those owners and contractors to refuse to buy masons' supplies from the plaintiffs, and thus by the loss of business and the profits to be derived therefrom, force the plaintiffs to refuse to sell to Gauthier or others whom the defendants might call unfair, and thus put a pressure upon those persons which should force them to cease employing nonunion masons and to give all their mason work to the defendants. This was a step further than what was held in *Pickett v. Walsh* to be an unlawful combination for an unjustifiable interference with another's business. It was in intention and effect a boycott; and it was none the less so because it was aimed at only one branch of the plaintiffs' business. There is no more right to interfere with one branch of a merchant's business, to obstruct it and lessen its profits, and so far as may be done to destroy it entirely, than there

is to interfere with, obstruct and destroy the whole of that business. The difference is merely one of degree, not of kind.

The defendants contend earnestly that each one of them has a perfect right to refrain from dealing himself, and to advise his friends and associates to refrain from dealing, with the plaintiffs, and that they have a right to do together and in concert what each one of them lawfully may do by himself. But that is not always so. It is especially true in dealing with such questions as these that the mere force of numbers may create a difference not only of degree, but also of kind. *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, 31 Sup. Ct. 492 [Bul. No. 95, p. 323]. So in *Pickett v. Walsh*, it was held among other things that "what is lawful if done by an individual may become unlawful if done by a combination of individuals." This principle is peculiarly applicable to cases like the one at bar. There is no such thing in our modern civilization as an independent man. No single individual could continue to exist, much less to enjoy any of the comforts and satisfactions of life, without the society, sympathy and support of at least some of those among whom his lot is cast. Every individual has the right to enjoy these, and is bound not to interfere with the enjoyment of them by others. That right indeed is usually one of merely moral obligation, incapable of enforcement by the courts, but it is none the less an actual wrong for any body of men actively to cause the infringement of that right in definite particulars; and especially where such an infringement is made possible only by the concerted action of many in combination against one and results in direct injury to his business or property, the courts should interfere for the protection of that person.

The question of damages remains to be dealt with. Upon that we find no error in the master's report. That the plaintiffs have sustained substantial damages is manifest; and the mere facts that it may be impossible to determine the total amount of their loss, and that it may be difficult to ascertain with absolute certainty the money value of even the damages that can be proved, is no reason for refusing to allow to the plaintiff what has been found to be capable of substantial proof. Doubtless merely speculative damages or any damages that have not been proved can not be recovered; but this does not require absolute mathematical demonstration or prevent the drawing of reasonable inferences from the facts and circumstances in evidence.

The result is that the plaintiffs are entitled to a decree enjoining the defendants from keeping the names of the plaintiffs upon their unfair list, from threatening to strike or to leave the work of any owner, builder or contractor by reason of such persons having purchased masons' supplies from the plaintiffs or having dealt otherwise with the plaintiffs, and from ordering or inducing a strike against an owner, builder or contractor for such reason, and that the plaintiffs shall recover from the defendants the sum of \$500 with interest from the date of the filing of the master's report, and their costs of suit, and have execution thereof.

CONTRACT OF EMPLOYMENT—EMPLOYMENT FOR LIFE—REFORMATION OF WRITTEN CONTRACT OBTAINED BY FRAUD—*Pierson v. Kingman Milling Co.*, Supreme Court of Kansas (Mar. 7, 1914), 139

Pacific Reporter, page 394.—Frank Pierson brought action against the company named for reformation of a contract. Pierson had been injured while in the employ of the company in 1906, one leg being broken and the other so badly hurt that it was amputated. The next day he signed a release in consideration of medical services, etc., which paper was read to him, as he claimed, in such a way as to include a provision that he should, in pursuance with an agreement already reached orally between him and the secretary and treasurer of the company, be employed by it for life. This provision, as a matter of fact, was not written into the document. He was personally unable to read the paper at that time on account of his weakness, the anaesthetic, etc. As soon as he was able to go to work he was employed by the company, and continued to work for it until May, 1911, when he was discharged. On the trial of the case in the district court of Kingman County the judgment was for the defendant. On appeal, this was reversed and the case remanded.

The court decided first that the statute of frauds did not prevent the enforcement of the contract because it was not signed by the company; for it was possible for it to have been performed within one year, because the employee might have died within that time.

The plaintiff's wife was present at the time the paper was read and signed, and it was argued that the opportunity which she had, but of which she did not avail herself, to read the document constituted constructive notice to Pierson of its contents, and that he could not bring the action for fraud after two years because of the statute of limitations on that kind of actions. The court, however, adopted the rule that if one of the parties assumes to read the contract to the other, and purposely misreads it, he can not take advantage of the other's want of care in relying upon his reading of it.

It was also held that if the agreement to furnish employment was actually a part of the contract, the paper was not a unilateral contract, but should be reformed to show the actual contract.

As to the contentions of the defense as to the indefiniteness of the contract, and the matter of the ratification by the company of the contract made by the secretary and treasurer, the court, speaking by Judge Mason, said:

This court is of the opinion that the contract relied upon by the plaintiff is not too indefinite to admit of enforcement; that it rests with the employer to select the character of work to be done, so long as it is suitable to the employee's capacity; and that the compensation, unless fixed by agreement, is to be such as is ordinarily paid for similar services. The contract is also objected to on the ground that the duration of the employment is too indefinite. We think this objection unsound, and this view is supported by the authorities. [Cases cited.]

The most difficult question presented is whether there was any evidence of original authority on the part of the secretary and treasurer of the company to make the contract for life employment, or of subsequent ratification of his action. We shall assume that there was no showing sufficient to support a finding of original authority on the part of Jay Holdridge to bind the company by a contract with the plaintiff to give him employment during his life, but we think there was sufficient evidence of ratification to take that question to the jury.

Giving to the evidence the liberal interpretation to which it is entitled when attacked by demurrer, we think the inference might reasonably be drawn that the plaintiff was given employment in pursuance of the agreement to provide him with permanent work; that both the president and vice president, as well as the secretary and treasurer, knew of his belief that the writing contained a provision on the subject; and that a ratification of the promise thereby resulted.

CONTRACT OF EMPLOYMENT—GROUNDS FOR DISCHARGE—DISOBEDIENCE OF RULES—*Corley v. Rivers, Supreme Court of Mississippi (Apr. 27, 1914), 64 Southern Reporter, page 964.*—The employee Corley brought suit for the balance of wages as manager of the defendant's plantation, after his discharge from his employment, the contract having been for one year, and he having served somewhat over two months, and received two months' pay. The jury in the circuit court of Tallahatchee County returned a verdict in favor of the plaintiff for the full amount, and a remittitur was entered by the court, which deducted the amount which he received during the year from other employment after his discharge. On appeal the supreme court reversed the judgment, Judge Reed saying in delivering the opinion:

Appellant had rules for the government of his plantation. Under these, the manager was enjoined not to abuse or whip tenants, and he was not permitted to carry a pistol.

The evidence shows that appellee had trouble with the tenants. He whipped two of them on different occasions. Thereupon appellant informed appellee that he did not want his tenants abused and whipped, and that appellee ought not to carry a pistol. Appellant further said that appellee must get rid of the one he was carrying or he would be discharged. Appellee refused to give up his pistol and left the employment.

The rules shown in this case are reasonable. We commend them. To us they seem consistent with justice and the fair administration of the law in the land. The owner must have found them advisable for the successful management of his business.

When appellee entered the service of appellant, it became his duty to observe these rules. His failure to comply with them was sufficient to render his services as manager unsatisfactory, and to justify appellant in discharging him.

Appellant should only be held liable to pay for the balance owing for services up to the time when appellee left the plantation. Upon

the trial, appellant tendered this amount. Judgment should have been for the same, with such costs as may have accrued in the case till the tender was made.

CONTRACT OF EMPLOYMENT—TERM—*Resener v. Watts, Ritter & Co., Supreme Court of Appeals of West Virginia (Dec. 9, 1913), 80 South-eastern Reporter, page 839.*—H. A. Resener who was employed as a traveling salesman by the company named quit its service and brought suit in May, 1910, to recover commissions alleged to be due him under the terms of his contract of employment. Verdict was in his favor in the circuit court of Cabell County, W. Va., but the company secured an award of a new trial, whereupon Resener took the case to the State supreme court of appeals. The award of a new trial by the lower court was here reversed, and judgment was entered on the verdict. The right to recover depended upon whether the employment was for a year or at will, and it was decided that the employment was for the latter.

The following syllabus by the court states the conclusions reached:

An employment upon a monthly or annual salary, if no definite period is otherwise stated or proved for its continuance is presumed to be a hiring at will, which either party may at any time determine at his pleasure without liability for breach of contract.

The burden of proving that such hiring was obligatory for a year rests on the party who seeks to establish that the contract covered that period.

Unless the understanding was mutual that the service was to extend for a certain fixed and definite period, it is an indefinite hiring, and is determinable at the will of either party.

EMPLOYER AND EMPLOYEE—CONDITIONAL RESIGNATION—DISCHARGE—DAMAGES—*Nesbit v. Giblin et al., Supreme Court of Nebraska (June 23, 1914), 148 Northwestern Reporter, page 138.*—Fred L. Nesbit was employed by Giblin & Co. as a traveling salesman, and was under contract for one year from December 21, 1909, at a salary of \$2,100. In May, 1910, the firm wrote to the salesman criticising him for selling certain furnaces at a lower price than they thought proper. He replied on May 20, stating that he would be glad to have his resignation accepted, and that he would remain in Milwaukee, where he then was, until he heard from them. They did not answer, and in a few days he went on to Minneapolis, his next field of work, and continued to take orders. June 6 the firm wrote him in regard to certain advertising matter, stating that they would continue to issue it until November, and would forward copies to him as issued, thus showing the expectation that he was to continue in their employ. June 20, the firm wrote him that they accepted his resignation of

May 20. He replied that conditions as to opportunities to secure other employment had changed, and as they had not accepted his resignation at the time, he considered himself still in their employ. They then took steps to terminate his employment, and he was unable to obtain employment until the latter part of December, 1910. The judgment in the district court of Douglas County was in his favor for \$1,054.13, and the defendant appealed. The supreme court affirmed the judgment, stating that the following instruction of the trial judge, the giving of which was one of the grounds of appeal, was correct:

You are instructed the letter written by the plaintiff on the 20th or 21st day of May, 1910, was not of itself a letter of resignation, but was what might be termed in law a conditional resignation, and by the terms and conditions of said letter the defendants had the right to accept or reject the said resignation on or before the time fixed by the said letter of said date. And in this connection you are further instructed the defendants did not comply with the terms and conditions of said letter on that date, and as a matter of law, had no right to accept said resignation at a later time than that fixed by the terms and conditions of said letter, unless you find from a preponderance of the evidence that the plaintiff was guilty of misconduct toward the defendants subsequent to the time he left Milwaukee for Minneapolis, or unless you further find that the defendants had discovered other misconduct of the plaintiff that occurred prior to the time they answered the letter written by the plaintiff at Milwaukee, Wis., dated on the 20th or 21st day of May, 1910.

EMPLOYER AND EMPLOYEE—LIABILITY OF EMPLOYER FOR WRONGFUL ACTS—ASSAULT ON THIRD PARTY—*Matsuda v. Hammond et al.*, Supreme Court of Washington (Dec. 27, 1913), 137 Pacific Reporter, page 328.—Mrs. Hammond was the owner of a market stand, the business of which was conducted by John Bell. Bell went to Matsuda's place of business to collect a bill and during an argument that ensued, assaulted Matsuda, who brought an action for damages against both Bell and Mrs. Hammond, his employer. He obtained a judgment in the superior court, Pierce County, Wash., which on appeal was set aside by the supreme court of the State, as to its effect on Mrs. Hammond, on the ground that the act of Bell was one not authorized by his employer so as to make her liable.

Judge Fullerton, for the court, said in part:

An employer is liable for the unlawful and criminal acts of his employee only when he directly authorizes them, or ratifies them when committed, or, perhaps, continues an employee in his employment after he has knowledge that the employee has committed, or is liable to commit, unlawful acts while in the pursuit of his employer's business. The liability does not arise from a mere contract of employment to do a legitimate and lawful act.

EMPLOYER AND EMPLOYEE—LIABILITY OF EMPLOYER FOR WRONGFUL ACTS—FALSE IMPRISONMENT—*Birmingham Ledger Co. v. Buchanan, Court of Appeals of Alabama (June 11, 1914), 65 Southern Reporter, page 667.*—Alfred Buchanan brought action against the newspaper company named for unlawful imprisonment. Judgment was in his favor in the circuit court of Jefferson County, and on appeal this was affirmed.

The plaintiff was one of a number of newsboys who were detained by agents of the defendant company until an extra should be gotten out, one of the objects of the detention being to prevent the boys from selling the papers of other publishers. The court held that lack of evidence that the door was locked or other steps taken by any agent of the company whose name could be given by witnesses was not important, since the circumstances and conditions furnished sufficient proof that an agent or agents of the company caused the imprisonment. That the evidence was adequate as to the acts being in the course of employment was held by the court, as shown by the following quotation from the opinion, which was delivered by Judge Walker:

Nor was proof lacking that each of such representatives of the defendant who participated in the wrong complained of was acting within the "course of his employment" in the sense in which that and similar expressions are commonly used in statements of the doctrine of respondent superior as a part of the law of principal and agent. For the conduct of its agent to impose liability upon the defendant it was not necessary for the latter to have authorized anybody forcibly to detain a newsboy in order to secure his services when desired. If the wrong was committed by the agent while he was executing his agency on the defendant's premises, not for a purpose of his own having no relation to the business of the defendant, but as an incident to the carrying on of that business, in the transaction of which he was engaged at the time, the defendant is liable though it did not authorize the agent to resort to such means in rendering the service for which he was employed. [Cases cited.] There was evidence tending to prove that the participation of each of the agents of the defendant who were referred to in the several counts of the complaint in the wrong to the plaintiff for which the defendant is sought to be charged with liability was an incident to the making of preparations for the circulation and sale of an issue of the defendant's paper, which obviously was one of the main objects of the business in which the defendant was engaged, the furtherance of which was not foreign to the business the agent was employed to transact.

As to the allowance of punitive damages the court said:

The court properly refused the written charge requested by the defendant, to the effect that the plaintiff could not recover punitive damages. Such damages may be awarded for an unlawful detention of one's person committed with actual malice or its legal equivalent. The malice required as an element for the recovery of such damages exists if there is a wanton disregard of the rights of the injured party.

EMPLOYER AND EMPLOYEE—LIABILITY OF EMPLOYER FOR WRONGFUL ACTS—TRESPASSERS—AUTHORITY OF RAILROAD BRAKEMAN—*Tarnowski v. Lake Shore & Michigan Southern Railway Co., Supreme Court of Indiana (Feb. 5, 1914), 104 Northeastern Reporter, page 16.*—This was an action by a father for the death of his minor son, who was alleged to have been killed by being kicked and pushed from a moving freight train on which he was a trespasser, by a brakeman named Hunt employed by the railroad company named. A verdict had been directed for the defendant in the circuit court of St. Joseph County, and the plaintiff appealed. The question involved related to the company's authorization of the brakeman to eject trespassers. Judge Morris, speaking for the court, said:

Appellee concedes that the conductor was authorized to eject trespassers and tramps from the train, and that it was competent for him to delegate such authority to Hunt, but that no such delegation was proven. That defendant was liable for an injury wantonly inflicted on a trespasser by an employee in ejecting him from the train, while the employee was acting within the scope of his authority, is not denied. If the evidence was such as to warrant a finding that the conductor authorized the brakeman to keep tramps or trespassers off the train, this judgment must be reversed.

The court determined that the evidence was sufficient to warrant such a finding and should have been submitted to the jury, and the judgment was therefore reversed and the case remanded for a new trial.

EMPLOYERS' ASSOCIATIONS—VIOLATION OF RESOLUTION TO MAINTAIN OPEN SHOPS—RECOVERY OF LIQUIDATED DAMAGES—*United Hat Manufacturers v. Baird-Unteidt Co., Supreme Court of Errors of Connecticut (July 13, 1914), 91 Atlantic Reporter, page 373.*—This case was by stipulation of the parties taken from the superior court of Fairfield County to the Supreme Court of Errors of Connecticut for its advice upon a finding of facts. The plaintiff is a nonstock corporation of the State of New York, composed of 56 companies, corporations, and individuals engaged in the manufacture of fur felt hats, with places of business in the States of Connecticut, New York, New Jersey, Massachusetts, and Pennsylvania. The defendant was a corporation located at Bethel, Conn., and was a member of the association.

The purposes and objects of the association, as recited in its certificate of incorporation, were to improve business conditions of its members, to maintain harmonious relations between them, and to promote, subserve, and encourage social intercourse between them.

Its by-laws provide that the decisions, prohibitions, orders, and regulations of the association and its board of directors shall be obligatory upon all members of the association, who agree to pay to

the association the sum of \$5,000 as liquidated damages for the violation or failure to comply with any such decision, etc. This sum is not to be considered as a penalty, but as damages, and it is stipulated that it shall not be necessary to prove any special damages. No member may resign until after 90 days' notice in writing, nor until all dues, fines, etc., are discharged. The board of directors has authority to settle all disputes between members of the association and their employees except as to cessation and resumption of work, the use of the union label, and the forfeiture of bonds, penalties, etc.

The United Hatters of North America is an unincorporated association of journeymen hatters having over 9,000 members, and owning a union label, which it permits to be placed in hats manufactured in factories employing its members solely and commonly called "union or closed shops."

From July 1, 1907, to January 14, 1909, the members of the plaintiff and its predecessor (the Wholesale Fur Felt Hat Manufacturers' Association) employed exclusively in their factories members of the United Hatters' association.

The plaintiff's predecessor entered into an agreement, to which the plaintiff succeeded, with the United Hatters that any disagreement between employer and employee should be submitted to arbitration. The United Hatters continued to act under this agreement until a difficulty arose which led to a resolution by the United Hat Manufacturers (plaintiff herein) to discontinue the use of the union label in all shops unless the United Hatters would put their men back at work in the establishment in which the difficulty occurred. All union employees thereupon went out on strike, and the plaintiff association, after about 10 days, undertook to open by employing workmen individually instead of through stewards, i. e., on an open-shop basis, under a resolution passed at a meeting at which the defendant company was represented. Some employers were able to resume work in this way, but the Baird-Unteidt Co., being in a strongly unionized district (the Danbury district), was unable to get workmen, and, together with other manufacturers similarly situated, undertook to get the plaintiff association to rescind its open-shop resolution, which failing, they tendered their resignation from the association, the defendant not being indebted at the time to the association unless for the \$5,000 claimed as damages for its violation of the resolution in hiring union workmen, which action was taken less than 90 days from the first notice of intention to withdraw from the association. The board of directors thereupon authorized the president of the plaintiff association to proceed against the withdrawing members for a recovery of the damages provided for in the by-laws, which action was afterwards ratified by the association, though not by the three-fourths vote required for the levy of a fine or assessment. No evidence of special

damage was offered, but the sum of \$5,000 was claimed as damages for the breach of the resolution.

The opinion of the court was delivered by Judge Wheeler. As to certain claims made by the defendant with regard to the illegality of the association and of its by-laws, he said:

The defendant claims this action must fail, since the plaintiff association is, because of its organization and its by-laws, illegal, and therefore its resolution, whose violation is the basis of the action, was invalid. The foundation of this claim is threefold, because: (1) The real purpose and object of the association was to permit it to order a suspension of work by its members; (2) to make agreements relative to the use of the union label; and (3) because the members of the plaintiff were engaged in interstate commerce, the association was a violation of the Sherman Act (act July 2, 1890, ch. 647, 26 Stat. 209 [U. S. Comp. Stat. 1901, p. 3200]), as its purposes were in restraint of trade.

Employers, as well as employees, may form associations for mutual protection and benefit. Each member of such an association submits his freedom to contract, to a greater or less extent, to the will of the association. The consideration of submission is the benefit presumed to flow from the action of members bound together for common ends. Unity of action of the members gives strength to the association, without which it can not serve its purposes or accomplish its ends. By-laws and regulations are a part of the machinery by which the association operates. Members must therefore submit, while membership continues, to all lawful by-laws and regulations enacted by the association for its government.

The objects of this association, as stated in the articles of association and by-laws, are most worthy. Neither they nor the finding show that the purpose of the association was to permit it to order a suspension of work and to agree in reference to the use of the union label. It is too late to question the right of a labor union to make by-laws providing for strikes and to issue its order for a strike in an effort to secure lawful objects by lawful means. *Reynolds et al. v. Davis et al.*, 198 Mass. 294, 84 N. E. 457 [Bul. No. 77, p. 393]. And it may prosecute the strike by any means neither illegal nor in violation of the equal or superior rights of others.

So, too, the association of employers may enact a by-law giving it the right to order a shutdown of the factories of its members, provided the objects sought be within its lawful purposes and the means used be lawful. And the employer has the right freely to hire his labor in the market without denial or unfair restriction of this right. The order of the association to stop work may curtail this right, but it is not, for this reason, illegal.

A by-law providing for a fine upon the members of either an employers' or a laborers' association for disobedience of its lawful orders is not unlawful. Each may involve coercion of its members; it may temporarily take away the livelihood of the employee, and it may injure, and, if continued, ruin, the business of the employer. Each member has agreed to this species of coercion in the belief that the common interest of all will best be served by the united action of many. Obedience to the lawful orders of the association is the condition of membership voluntarily encountered by previous assent to the

by-laws. If the defendant intended to claim that this part of the by-laws was illegal, we have already answered that a by-law of this character was not illegal.

The argument of the defendant rests upon the premise that this resolution "that each member offer situations to operatives as individuals" amounted to an order for a cessation of work. If the employees accepted employment as individuals, it is said they would forfeit their membership in the union. If they maintained their membership, the employers could not run their factories.

As the hatters' union dominated this industry in the Danbury district, enforcement of the vote would mean, it is said, a lockout and suspension of work. Therefore it is argued the vote was equivalent to a lockout. The argument assumes these consequences. The facts of record show that consequences of this character were not intended. The vote is not to be read in the light of possible consequences. Its meaning is undoubted. A vote that each member offer situations to operatives as individuals is a declaration for the open shop. Its purpose was to preserve to employers the right to contract for their labor regardless of its membership in the union. The right to so contract is one of the inalienable rights of every employer of labor. Every employer and employee has, under the law, such freedom of contract. The law will not take it from him, much less declare illegal his effort to establish his right to it.

We see nothing in the record upon which to found the argument that the use of the union label was the object of the plaintiff. So far as appears, the label had nothing whatever to do with the resolution in question.

We do not think it is necessary to discuss the proposition that a vote by employers to conduct their factories as open shops and to exercise their right to hire their labor as individuals, and not as members of a labor union, is a restraint of trade within the Sherman Act. Nor do we think the proposition tenable that the object of the association was the making of the arbitration agreement which the plaintiff had with the United Hatters, and that it was void because it involved the exclusive employment by the members of the plaintiff of union labor. The arbitration agreement does not bear this construction, and its making was a mere incident of the business of the plaintiff. Moreover, it did not relate to, or enter into, the vote for the open shop.

The recovery is sought for the violation of a resolution of the plaintiff, under section 2 of Article VIII of the by-laws that:

"All members agree to pay to the association the sum of \$5,000 as liquidated damages for the violation of, or failure to comply with, any of the decisions, orders, prohibitions, and regulations, passed or made by the association, in accordance with these by-laws."

The opinion then takes up the provision of the by-laws just quoted, and shows that it is properly construed not as a penalty, but as liquidated damages.

It also takes up the matter of the resignation, and shows that it became effective upon its receipt by the association on September 9, so that the running of defendant's shop after September 20 as a union shop was not a violation of the by-laws of the association of which it had ceased to be a member.

Taking up the question of the agreement entered into at the time the shop was opened, the court concludes its opinion as follows:

The only other violation of which the plaintiff complains is the entering into the so-called Father Kennedy agreement and the opening of its factory in pursuance thereof.

The open-shop resolution of January 28, if enforced, would deprive the United Hatters of the jurisdiction and control of all employees of the members, and would prohibit the employment of exclusively union labor. That it would precipitate a contest with a powerful labor organization was self-evident. The first resolution, that of January 14, voting to discontinue the use of the union label, was voted for by the defendant. The finding does not show whether the resolution of January 28 was, in fact, voted for by the defendant or not. It matters not; it was duly adopted, and bound all members, the nonacquiescent as well as the acquiescent.

All of the factories of the Danbury district, except the two open-shop factories, remained closed after the United Hatters withdrew their men on the day following the January 28 resolution. Many efforts were made to settle the strike. Finally two of the clergy, acting as self-appointed mediators, brought about an agreement signed by all the members of the plaintiff in the Danbury district and by the officers of the United Hatters. This was an agreement in which each of the contracting parties agreed, in consideration of the promises of the other, to do certain things. It was an evident attempt to devise a plan under which work could be resumed pending the 90 days' notice of intent to resign of the members of the plaintiff and upon the resignations becoming effective, securing the return of these members to the closed shop, and to the complete resumption of the jurisdiction of the United Hatters over the employees of each member. The plan was designed to avoid the liability which this action seeks to enforce. The very fact that these members entered into an agreement with the United Hatters concerning the opening of their shops and the conditions under which the members of the hatters' association should resume work was a breach by these members of the open-shop resolution.

The agreement was a cover, so manifest that it needs no argument to demonstrate it, for the purpose of having the factories of the members ostensibly run as open shops, but in reality run as closed shops under the jurisdiction of the United Hatters.

The open-shop resolution meant that the employers should be free to hire where they pleased and at such wage as the market for labor fixed, and that the employee should be free to choose his employer and to make his own conditions of employment. The agreement took from each the right to freedom of contract. These employers knew what they were engaged upon, for, simultaneously with this agreement, they agreed with each other to indemnify against any liability which might arise to the plaintiff. Had they in good faith intended to run an open shop, would they have felt it essential to make provision for the contingency of their agreement being held to be a violation of their obligation to the plaintiff? In fact, the agreement was to hire exclusively union labor. The contracting employers included all the manufacturers with two exceptions in the chief industry of the Danbury district.

We held in *Connors v. Connolly et al.*, 86 Conn. 641, 86 Atl. 600 [see Bul. No. 152, p. 289], such an agreement against public policy and void. Meritorious as the effort of these mediators to settle a strike of fatal consequence to large communities was, we can not let our sympathy for the peacemaker cause us to forget that the security of society depends in great measure upon the preservation, inviolable, of the obligations of men.

We think this agreement a plain violation of the resolution of January 28.

Finally the defendant claims the plaintiff had no authority to institute this action, since it was not authorized by a three-fourths vote of all the members of the plaintiff, as is required by Article IX, section 1, of the by-laws in proceedings relative to any fine or assessment.

We have expressed the opinion that the recovery of the \$5,000 under section 2 of Article VIII is not an action brought to recover a fine or assessment, but a sum determined as liquidated damages for a breach of any of the lawful decisions, orders, prohibitions, and regulations of the plaintiff, and hence section 1 of Article IX has no relation to an action to prosecute the collection of this sum. Such an action is an incident of the business of the plaintiff, and committed, as are the ordinary business affairs of every corporation, to its directors, whose authority is complete, except as curtailed by charter, by-laws, or the law. In this case there was no such curtailment. The plaintiff ratified the action of the directors, but we think this did not add to the powers already vested in them by virtue of their office.

The superior court is advised to render its judgment in favor of the plaintiff for \$5,000, with interest from June 14, 1909.

EMPLOYERS' LIABILITY—ASSUMPTION OF RISKS—INCOMPETENT FELLOW SERVANT—*Walters v. Durham Lumber Co., Supreme Court of North Carolina (Apr. 22, 1914), 81 Southeastern Reporter, page 453.*—S. A. Walters obtained a judgment against the lumber company in the superior court of Durham County, N. C., for injuries sustained while employed by it. This judgment was affirmed by the supreme court of the State, on appeal. Several points were before the court, but those of particular interest relate to the liability of the master when injury is due to the incompetency of a fellow employee, and the risk assumed by an employee from the negligence of such fellow servant. These points were disposed of by Judge Walker, delivering the opinion of the court, in effect as follows:

"If the master becomes aware that the servant has become, for any reason, unfit for the service in which he has employed him, in such a sense as to endanger the safety of his other servants, it will become his duty to discharge the unfit servant; and if, failing in this duty, one of his other servants is injured by the negligence of the unfit servant, he will have an action for damages against the master." Thompson on Negligence, sec. 4050.

The charge as to the assumption of risk was correct and in accordance with the law as we have often declared it, and also substantially

in response to defendant's own prayer. Plaintiff assumed the risk involved in the negligence of his fellow servant, but not that arising out of the negligence of the master in selecting him, if he knew that he was incompetent, as the risk in that event would be caused by the master's own negligence.

EMPLOYERS' LIABILITY—DUTY OF EMPLOYER TO INSTRUCT—NEGLIGENCE—*McCarty v. R. E. Wood Lumber Co., Supreme Court of Appeals of West Virginia (Nov. 4, 1913), 80 Southeastern Reporter, page 810.*—Lee McCarty was a boy 17 years of age, employed by the company named at taking lumber from a conveying table in its mill and loading it on a truck. While stooping to block the truck, his clothing was caught by a set screw in a revolving shaft and he was drawn to the shaft and severely injured. Judgment was given in his favor against the company in the circuit court of McDowell County, W. Va., in the sum of \$15,000, which judgment was affirmed by the supreme court of appeals of the State. The following quotation from the opinion of Judge Robinson explains the position taken by the court:

At the time of the injury plaintiff had worked only five days. When he was put to work at the end of the table no instructions as to lurking dangers were given him, nor was he at any time warned. Defendant claims that there was no duty on it to instruct or warn plaintiff as to dangers from the revolving shaft, that the shaft was plainly visible to plaintiff, and that he was of sufficient age and discretion to know that it was dangerous. But a careful consideration of the evidence leads us to the conclusion that the danger of the set screw in the revolving shaft was not so patent as of itself to warn plaintiff. It was so situated as not to be patent to him while engaged in his duty. He was not required to make close inspection of the shaft. It was the master's duty to have it reasonably safe. Under all the circumstances shown it can not be said to have been so. One might avoid the shaft and the sprocket wheels, as it seems plaintiff did, and still be caught by the long projecting set screw not so patent as were the major parts of the machinery. It was clearly defendant's duty to instruct plaintiff of the presence of the set screw. Situated as it was, a little thing hidden generally by the presence of the table and the truck, a prudent man might not observe it for many days of service in proximity to it. Moreover, plaintiff was young and inexperienced in working about machinery. This fact made it even more incumbent on defendant to instruct him as to the danger of the surroundings in which he was placed to work.

EMPLOYERS' LIABILITY—MUNICIPALITIES—GOVERNMENTAL FUNCTIONS—CLEANING STREETS—*Mayor and Aldermen of City of Savannah v. Jordan, Supreme Court of Georgia (Sept. 19, 1914), 83 Southeastern Reporter, page 109.*—T. B. Jordan was injured by the breaking of the

axle of a cart in which he was hauling street garbage for the street and lane department of the city named. It appeared that his superiors had had notice of the defective condition, and had ordered him to continue the use of the cart; but the city claimed exemption from liability on the ground that it was exercising a governmental function delegated to it by the State, and the court took this view and sustained the city's demurrer to the complaint, reversing the action of the superior court of Chatham County. The following is an extract from the syllabus prepared by the court:

The duty of keeping the streets of a municipality free from matter which, if allowed to remain, would affect the health of the public is a governmental function, the exercise of which would exempt the municipality from liability to a suit for damages to an employee without fault, who is injured by reason of a defective cart in which he is hauling "the sweepings of the streets" of such municipality, and which has been furnished him for that purpose by the agents of the municipality.

EMPLOYERS' LIABILITY—OBEDIENCE TO ORDERS—ASSUMPTION OF RISKS—CONTRIBUTORY NEGLIGENCE—SAFE PLACE TO WORK—*Magnuson v. MacAdam et al.*, *Supreme Court of Washington* (Jan. 7, 1914), 137 *Pacific Reporter*, page 485.—Magnuson was employed by MacAdam as a common laborer paving streets. While an attempt was being made to move a concrete mixer by its own power, Magnuson was ordered by the foreman to take hold of a tongue attached to the front axle of the machine, to guide the machine. He obeyed the order and was injured by the tongue swerving and striking him as one of the front wheels struck a stone on the street. A judgment was given in his favor in the superior court, King County, from which MacAdam appealed to the State supreme court, where the judgment was affirmed. The point of interest and the basis of the conclusions of the court are stated below in the language of Chief Justice Crow:

Respondent (Magnuson) insists that appellant (MacAdam) was negligent in failing to provide him with safe appliances and a safe place in which to work, while appellants, in support of their motions, contend that all dangers incident to respondent's employment were open and obvious, or by the exercise of ordinary care and prudence could have been known to him, and that he assumed the risk of such dangers.

Respondent had a right to rely upon the orders and superior knowledge of the foreman, who represented appellants.

The evidence shows that the attempt to move the machine by its own motive power was under the immediate supervision of appellants' foreman, and that respondent acted in obedience to his specific orders. It was the foreman's duty to look after respondent's safety. This being true, respondent did not assume the risk, nor can he be held guilty of contributory negligence as a matter of law. [Cases cited.]

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—CONTRIBUTORY NEGLIGENCE—*Stone v. Atlantic Coast Line R. Co. et al.*, *Supreme Court of South Carolina* (Dec. 15, 1913), *80 Southeastern Reporter*, page 433.—The widow of Samuel B. Stone brought suit to recover damages for the death of her husband, alleged to have been caused by the negligence of the railroad company and a conductor and an engineer in its employ. Stone was a car repairer, working in the yard and under the rules of the company. One rule of the company required that a blue flag or light be displayed by men working under or around cars, and other employees were forbidden to move or couple another car to a car on which the blue signal was displayed. Stone had a blue flag protecting the car on which he was at work, but removed it at the request of the yard conductor in order that a train might come in on the track to get some cars. He then crossed over to another track and sat down under the end of a box car. The car was struck by a train, injuring Stone and causing his death. The company contended that death was due to the negligent violation of its rules by the decedent, and that there was no liability on its part. The widow obtained a judgment, however, in the common pleas circuit court of Richland County, S. C., and this judgment was reversed by the State supreme court. The following language, taken from the opinion of the court, shows the grounds for reversal:

In this case, there is no testimony tending to excuse the violation of the rule. There is not a particle of testimony that the conductor or engineer or any one else knew that Stone had gone under the car. It is argued that he did it to get out of the rain in order that he might read over his list of "bad orders," or cars to be repaired, or make entries in his books of repairs that he had already made. It would be a mockery of justice to say that the master must make, promulgate, and enforce rules for the safety of his servant, and allow the servants to set them at naught upon such a flimsy pretext, and hold the master liable for injuries resulting therefrom.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—MINORS—ASSUMPTION OF RISKS—*Adams v. Chesapeake & O. Ry. Co.*, *Supreme Court of Appeals of West Virginia* (Feb. 13, 1914), *80 Southeastern Reporter*, page 1115.—One Adams, a boy 17 years of age, was employed as a section hand by the railway company. After having worked for seven or eight hours on the tracks, he was stationed at a dangerous cut to keep the track free from obstruction during the night and was struck by a train and killed at 4 o'clock on the morning of March 1, 1910, after having been on duty for about 20 consecutive hours.

Fannie Adams, administratrix, obtained a judgment of \$2,000 against the company in the circuit court of Cabell County, W. Va., and this judgment was affirmed by the supreme court of appeals of

the State. The company contended that no liability attached to it, as the decedent had assumed the ordinary risks of the employment, but the court rejected this contention. The duty of an employer toward a minor employed in a hazardous place is made clear by the language below, taken from the opinion of Judge Poffenbarger:

The law imposes a peculiar duty upon masters in favor of minor servants, on account of their inexperience and inability to appreciate danger. One who employs a minor and places him at work in a dangerous place is under a duty to apprise him of the danger and show him how to avoid it, except in very plain cases of obvious danger, and the younger the servant the higher the duty of the master. As shown by the declaration and proof, the plaintiff's decedent was only 17 years old, wherefore it was the duty of his employer to apprise him of all dangers connected with his work, or incident to his service, of which he did not have knowledge. No ground upon which to distinguish the danger from overwork and loss of sleep of the servant from other dangers attendant upon it is perceived. Where minors are concerned, ordinary risks are, for evidential purposes, always treated at the outset of the inquiry as extraordinary, and the burden of establishment of the servant's comprehension of the particular risk rests upon the employer.

EMPLOYERS' LIABILITY—SAFE PLACE TO WORK—APPROVED MACHINES—*Ainsley v. John L. Roper Lumber Co., Supreme Court of North Carolina (Mar. 11, 1914), 81 Southeastern Reporter, page 4.*—A judgment was given against the lumber company named in the superior court of Beaufort County for the negligent killing in August, 1912, of one of its employees—a boy 14 years of age. The boy was operating a lathing machine when he was struck by a piece of wood thrown back by the saw, and killed. One contention of the company was that as the lathing machine used was one "known, approved, and in general use," no legal liability attached to it by failure of the machine to work properly. It was proved, as evidence of the unsafe condition, that not infrequently pieces of timber were hurled back from the machine, threatening the safety of the employee, and that these pieces of timber made dents and marks on the wall 20 feet back.

In affirming the opinion of the lower court, Judge Hoke, who spoke for the State supreme court, said:

It is the accepted rule in this State, applied in numerous decisions of the court, that "an employer of labor, in the exercise of ordinary care, that care that a prudent man should use under like circumstances and charged with a like duty, must provide for his employees a reasonably safe place to do their work and supply them with machinery, implements, and appliances reasonably safe and suitable for the work in which they are engaged, and such as are known, approved, and in general use." [Cases cited.]

Judge Hoke then quoted from the opinion in the case, *Marks v. Cotton Mills*, 135 N. C. 136, 47 S. E. 432, after which he said:

From this we think it follows that an employer is not protected, as a conclusion of law, because he is operating a machine which is "known, approved, and in general use," but, although such a machine or appliance may have been procured, if its practical operation should disclose that employees are thereby subjected not to the ordinary risks and dangers incident to their employment but to obvious and unnecessary dangers which could be readily removed without destroying or seriously injuring the efficiency of the implement, such conditions, if known or if allowed to continue, might permit the inference of culpable negligence against the employer; that he had not, in the particular instance, measured up to the standard of care imposed upon him by the law, a position upheld by many authoritative cases and by text writers of approved excellence.

EMPLOYERS' LIABILITY—STATUS OF EMPLOYEE RIDING FROM WORK—STREET RAILWAYS—PASSES—*Indianapolis Traction & Terminal Co. v. Isgrig*, *Supreme Court of Indiana* (Feb. 5, 1914), 104 *Northeastern Reporter*, page 60.—This action was brought against the street railway company named for negligence in causing the death of the decedent, who had been its employee, and a judgment for plaintiff for \$5,000 was given in the Hamilton circuit court. He was riding to his home after completing his work, and had been given a pass, which contained a stipulation exempting the company from liability for death or injury while using the same.

One question arising was as to whether the decedent was a passenger or a fellow servant with the operators of the car. The court followed its former decisions in deciding that he was a passenger.

This left only the controversy as to whether the terms of the pass were binding upon him and upon his widow and child. As to this Judge Erwin spoke as follows in delivering the opinion of the court, which sustained the decision of the court below:

If that question must be answered in the affirmative, then the cause must be reversed. If it is answered in the negative, then the other alleged errors are not available. The answer to this question seems to depend upon the fact as to whether the appellee was a passenger for hire, or whether the pass given was a gratuity bestowed upon the servant. It seems to be settled in many of the States that, where a pass is issued as a gratuity, the clause providing that the holder assumes all risks of accident is binding. It is equally well settled that, where there was a consideration for the transportation that a stipulation on the ticket or pass that the carrier should be exempt from liability for injuries resulting from the negligence of its servants, such stipulation is contrary to public policy and void. [Cases cited.] The evidence in this case established the fact, without any dispute, that the appellant gave to all its employees tickets such as the one shown to have been given decedent, and it is fair to presume that this one was given as a part of the wages of decedent.

EMPLOYERS' LIABILITY—STATUS OF EMPLOYEE RIDING ON ENGINE IN VIOLATION OF RULES—TRESPASSER—*Dixon v. Central of Georgia Ry. Co., Court of Appeals of Georgia (Jan. 20, 1914), 80 Southeastern Reporter, page 512.*—Dixon was employed as a fireman by the railroad company and was killed while riding on one of its engines as a passenger, having left the passenger coach in which he was riding and got upon the engine, contrary to the rules of the company. His widow brought suit for damages in the city court of Americus, Ga., where judgment was given in favor of the company, this judgment being affirmed by the court of appeals. The following syllabus by the court explains the grounds upon which its action was based:

Where a locomotive fireman in the employment of a railway company was riding upon a train as a passenger, and voluntarily left the coach in which he was riding and got upon the engine, either by the express permission or without the disapproval of the engineer, it not appearing that there was any rule or custom of the railway company permitting the employee to ride upon the engine, but it being on the contrary a violation of the rules of the company for him so to do, he was a trespasser, and his widow had no cause of action against the railway company for his homicide, resulting from the derailment of the train, caused by a switch which was defective, or which had been negligently left open.

EMPLOYERS' LIABILITY—STATUS OF EMPLOYEE RIDING TO WORK—*Klinck v. Chicago Street Railway Co., Supreme Court of Illinois (Feb. 21, 1914), 104 Northeastern Reporter, page 669.*—Charles A. Klinck, an employee of the company named, while attempting to board one of its cars, was thrown to the ground and seriously injured, the injury being due, as was alleged, to the negligence of the employees in charge of the car. He secured a verdict of \$6,500 in the superior court of Cook County, which judgment was affirmed by the appellate court, whereupon the railway company appealed to the supreme court, which affirmed the decisions below. The circumstances were determined to be such as to warrant the jury in finding in the plaintiff's favor on the questions of negligence and due care, and this left remaining the questions whether the plaintiff was a passenger or an employee in his relation at the time he was injured, and, if a passenger, whether the condition indorsed on his employee's ticket, purporting to release the company from liability for personal injuries, was a bar to his recovery in the action.

Judge Cooke, speaking for the court, said in part:

The great weight of authority, however, is to the effect that when the employee, either by virtue of his contract of employment or under a rule or custom of his employer, is accorded the same means and privileges of transportation over the lines of his employer as an ordinary passenger for hire, then, while riding upon his employer's

cars at a time when, under his contract of employment, he is neither under the control of his employer nor obliged to perform any service for him, he is to be regarded as a passenger, and that, under such circumstances, it is immaterial that the employee be either going to or coming from his place of work.

The opinion then discusses the cases setting forth this rule, and distinguishes those cited by the company as upholding their view that the injured man stood in the relation of an employee, and continues as follows:

The ticket on which Klinck was intending to ride having been given to him, under his contract of employment, as part of the consideration for his services, he was a passenger for hire, and the stipulation on the back of the ticket releasing plaintiff in error from liability for personal injuries was therefore void. In *Dugan v. Blue Hill Street Railway Co.*, 193 Mass. 431, 79 N. E. 748, it was said: "Where a pass is issued as a gratuity the clause providing that the holder assumes all risks of accidents is binding but where such a pass is issued to an employee as one of the terms of his employment the clause is not binding." [Cases cited.]

EMPLOYERS' LIABILITY—WARNING OF NEW DANGERS—STRIKES—INJURY TO GUARDS—*McCalman v. Illinois Central Railroad Co. et al.*, *United States Circuit Court of Appeals, Sixth Circuit (June 30, 1914)*, 215 *Federal Reporter*, page 465.—Charles E. McCalman brought suit for damages for personal injuries against the company named and another railroad company, and judgment was for the defendants on a directed verdict in the United States District Court for the Western District of Tennessee. During a strike McCalman had been employed as a guard, and with others was located at a certain crossing. Deputy marshals were sent to that crossing in response to a telephone message that there was trouble there, without warning to either group of the presence of the other. The marshals mistook the guards for strikers, attacking them without warning or provocation, and in the clash that resulted the plaintiff was shot and permanently and seriously injured. On appeal by the plaintiff the judgment was reversed and the cause remanded for jury trial.

Judge Warrington, who delivered the opinion of the court, said in part:

It must be conceded that the plaintiff was engaged in a hazardous employment during the conditions usually attending such a strike as the one then prevailing at the Nonconnah yards; and yet it is now plain enough that a new and distinct peril was added to that employment, though whether this was due to any breach of duty on the part of the defendants is the problem. Three engines had been torn up, and for quite a while "a state somewhat of riot and insurrection" had prevailed there.

It is a general rule as respects any hazardous occupation that the master shall inform his servants of all perils to which they will be exposed, which are or should reasonably be known to him, except such as are obvious to the servants or through the exercise of ordinary care on their part may be foreseen and in either event injury therefrom may reasonably be avoided. This duty of the master so to inform his servants extends to any change made by him which introduces into their service a new element of danger. And the duty so imposed upon the master is of a primary character and is therefore nondelegable.

The defendants bore a contractual relation to McCalman and so owed him the duty not to enhance the peril of his service without notice. Plainly it would not have been sufficient merely to notify him of the coming of the deputies, though even this, as we have seen, was not done. The chief danger rationally to be apprehended lurked in the telephone message, "There was trouble at Nonconnah"; and the deputies approached the crossing with that belief. The nature of the danger, if under all the circumstances it was one reasonably to be anticipated, did not lessen defendants' duty to McCalman; for the knowledge of these new conditions would have enabled him to decide whether to remain at the crossing or discontinue his service.

The judgment is reversed, with costs, and the cause remanded.

EMPLOYERS' LIABILITY INSURANCE—MALPRACTICE OF COMPANY'S PHYSICIAN—*May Creek Logging Co. v. Pacific Coast Casualty Co.*, Supreme Court of Washington (Nov. 17, 1914), 144 Pacific Reporter, page 67.—This was an action by the logging company named to recover on its policy of insurance written by the casualty company, which policy undertook to indemnify the insured company against specified kinds of losses. The logging company had been compelled in an action at law to pay damages to one of its employees, Klodek, for the malpractice of a surgeon employed by it; see 129 Pacific Reporter, page 99, Bulletin No. 152, page 241. Medical and surgical treatment were furnished Klodek under an arrangement by which the company collected a monthly fee from its employees, in consideration of which it undertook to furnish and provide suitable medical care and treatment for its injured employees. In its complaint the company alleged that this custom of providing medical and surgical treatment was known to the insurance company, and contended that the liability of the latter company covered such a condition as arose in the present case. The logging company had tendered to the casualty company the defense of the action when Klodek had sued for the malpractice of the logging company's physician, but the casualty company declined. Judgment was against the logging company in the sum of \$4,500, which judgment was on appeal affirmed, requiring at the settlement the sum of \$4,856.85, and this action was brought to recover this sum, together with the fees and expenses amounting to \$1,000, with interest on the total. In the superior court of King County

judgment had been rendered for the casualty company on its demurrer to the complaint of the logging company, whereupon this appeal was taken, the appeal resulting in the judgment of the court below being affirmed. Judge Fullerton delivered the opinion of the court, first stating the facts as above, after which he said:

The trial court sustained the demurrer on the ground that the loss suffered by the appellant was not a loss covered by the conditions of the policy. This conclusion we think is the only conclusion that can be properly drawn from the facts shown by the record. The respondent's liability of course depends upon the conditions of its policy. If it has thereby undertaken to answer for losses arising from claims of damages on account of the negligent failure of the appellant to perform a special contract wherein it undertook to furnish an employee with hospital, medical, and surgical services, then it is liable to answer to the suit of the appellant, otherwise not. We can not think the policy bears this interpretation. It purports to cover only losses arising from claims of damages by the appellant's employees on account of accidental injuries suffered by the employees while in the prosecution of the appellant's logging business, and the departments dependent upon and the operations connected therewith. Hospital, medical, and surgical services are no part of the logging operations, and the injured employee while in the hospital was performing no service connected with the appellant's logging business. And while the appellant alleges that it is the custom of logging companies to deduct a hospital fee from the wages of each of its several employees, and use the fee in the payment of services to be rendered such employees as become sick or injured and that the respondent knew of this custom, we can not think the facts in any way alter or modify the terms of the insurance. Aside from the fact that the recovery was had upon a specific contract, and not upon the custom, the insurance is only against losses arising from negligence in the logging operations, not from losses arising from negligence in the maintenance of the hospital.

INTERFERENCE WITH EMPLOYMENT—ACTIONS—EVIDENCE—*Johnson v. Aetna Life Insurance Co., Supreme Court of Wisconsin (May 1, 1914), 147 Northwestern Reporter, page 32.*—Frank E. Johnson brought action against the Aetna Life Insurance Co. for procuring his discharge from his employment with the Simmons Manufacturing Co. The jury in the circuit court of Milwaukee County rendered a verdict in his favor, and assessed actual damages at \$294 and punitive damages at \$5,000. In lieu of the granting of a new trial the plaintiff was permitted to remit \$4,000 punitive damages, and judgment was entered on the verdict as amended, whereupon the company appealed, securing a reversal of the judgment of the court below. Johnson had been injured in the employ of the manufacturing company, had resumed work after recovery, and had brought suit for the injury. His case in the suit against the insurance company rested on the fact that it had written to Vincent, the superin-

tendent of the manufacturing company, advising him to discharge the employee, on the ground that it was not for the interest of the manufacturing company to retain employees who had brought suit against it for damages. The testimony of Vincent and of Mr. Simmons (presumably the president and chief owner of the manufacturing company) was to the effect that Vincent disregarded this communication, and did not bring it to Simmons' attention; that Simmons noticed that Johnson was still working, and on his own initiative ordered Vincent to discharge him.

Judge Barnes, who delivered the opinion of the court, stated the questions to be decided, and discussed the law applicable to the first, showing that such an interference with employment, if proved, would create a right of action, as follows:

This appeal presents two questions: (1) On the facts found by the jury, was the plaintiff entitled to judgment? (2) Has the finding of causal connection between the acts complained of by the plaintiff and his discharge sufficient support in the evidence?

The first question must be resolved in favor of the plaintiff. We agree with defendant's counsel that if their client was justified in doing what it did in the way of procuring Johnson's discharge, the fact that it acted from malicious motives would not give a right of action. The presence of malice would permit the recovery of punitive damages, if defendant acted without justification, but would not in itself create a cause of action where none existed without it. Malice makes a bad case worse, but does not make wrong that which is lawful. [Cases cited.]

But the plaintiff had the right to dispose of his labor wherever he could to the best advantage. This is a legal right entitled to legal protection. Such right could be interfered with by one acting in the exercise of an equal or superior right. As against all others, the plaintiff was entitled to go his way without molestation; and, if any one assumed to meddle in his affairs, he did so at his peril. [Cases cited.]

Undoubtedly cases might arise where an insurer such as the defendant might be justified in saying to the insured that it would cancel its policy unless a certain employee was discharged. Such employee might be so careless of his own safety or the safety of his fellow servants that the insurer might not care to assume the added hazard that would be liable to follow from such conduct. We have no such case before us, however. The jury might well find in the present case that the purpose which the defendant had in mind was to deprive the plaintiff of his earning power so that he could not successfully carry on his suit to recover damages for the injuries which he had received. This savors too strongly of oppression to be considered a legitimate reason for a third party interfering with the relations between employer and employee.

On the question of evidence, however, the court held that while the writing of the letter was enough to make out a *prima facie* case, and to entitle the plaintiff to a judgment if no other testimony was offered, yet, since there was no evidence showing causal connection between

the letter and the discharge, and there was positive uncontradicted evidence that the discharge resulted from other causes, there was no conflict of evidence to go to the jury, but the judgment, as a matter of law, should be for the defendant. Two judges dissented from this view of the case.

INTERFERENCE WITH EMPLOYMENT—CONSPIRACY—ACTIONS FOR DAMAGES—*Bausbach v. Reiff et al.*, *Supreme Court of Pennsylvania* (March 30, 1914), 91 *Atlantic Reporter*, page 224.—A previous report of this case (85 Atl., p. 762) was noted in Bulletin No. 152, page 271. There the Supreme Court of Pennsylvania reversed the action of the court of common pleas of Schuylkill County in granting a nonsuit, and remanded the suit to that court for trial. The result was a verdict in favor of the defendants, and the plaintiff alleged exceptions, the result being a second reversal with orders for a new trial.

Bausbach brought action against Reiff and a number of others for the loss of his employment with a brewery company, where he had been chief engineer for five years. He had reported the theft of merchandise from the company by an employee, who had been discharged as a result of this disclosure as to his conduct. On July 18, 1910, a committee of employees presented to the manager of the brewery a paper, signed by the defendants, reading as follows: "We, the undersigned, do hereby declare that we refuse to work after twenty-four hours' notice to the employers of the Rettig Brewing Co. as long as George Bausbach is employed at same plant." As a result Bausbach was immediately discharged.

In the opinion delivered by Judge Potter, the court states that the third assignment of error is as follows:

If you find, of course, that these men were justified in requesting the dismissal of this man Bausbach, the plaintiff, on account of his making it so unpleasant for them that they did not care to work with him, that is the end of this case; your verdict should be in favor of the defendants.

The opinion continues:

The first, second, twelfth, and thirteenth assignments are to language used in the charge and in answering points with respect to which substantially the same question is raised, and that is whether employees, to whom a fellow workman is for any reason disagreeable, may lawfully combine for the purpose of procuring his discharge by notifying the employer that they will refuse to work if the workman to whom they object is retained.

Several quotations are made from the authorities as to conspiracy for this purpose, the following being from the opinion in *De Minico v. Craig*, 207 Mass. 593, 94 N. E. 317 (Bul. No. 95, p. 349):

The plaintiff had a right to work, and that right of his could not be taken away from him or interfered with by the defendants, unless it

came into conflict with an equal or superior right of theirs. The defendants' right to better their condition is such an equal right. But to humor their personal objections, their likes and dislikes, or to escape from what "is distasteful" to some of them, is not in our opinion a superior or an equal right. * * * One who betters his condition only by escaping from what he merely dislikes, and by securing what he likes, does not better his condition within the meaning of those words in the rule that employees can strike to better their condition.

The opinion then applies this principle to the facts of this case as follows:

In the light of these authorities, which point out a sound distinction between what a single individual may lawfully do and that which a combination of individuals may do, the instructions of the trial judge which are the subject of the first three assignments of error were inadequate and erroneous. The united action of the defendants was put upon the same basis as that of any single one of them; the trial judge using by way of illustration a supposed act by Reiff, the first defendant named. It does not appear that the jury were instructed that an act which might be lawful if done by one person might become unlawful if a number of persons combined to do it. The only fair interpretation which could be placed upon the instructions given was that, "if Frank G. Reiff or any other one of these defendants" had the right to threaten to stop work if plaintiff was not discharged, the entire 28 men who signed the paper might lawfully combine to do the same thing. This was not a sound statement of the law. Again, it appears that the jury were instructed that, if plaintiff "worked on the nerves" of his coemployees, if he made himself "objectionable," "obnoxious," "unpleasant," or "distasteful" to them, they had the right to unite to procure his discharge by threatening to strike. This was going too far. The jury might very well have been instructed that, if plaintiff's habits, or his character, or his conduct while at work towards his fellow workmen was such as to render him an unfit associate for ordinary workmen of good character, it would have been sufficient reason for interference by his fellow workmen with his employment. They had the right to combine to advance their own interests in any proper way, but not for the purpose merely of inflicting injury upon another. It appears from the evidence that some of the defendants had disagreements with plaintiff, and gave some reasons for disliking him. But none of them testified that these difficulties caused them to sign the paper. Eighteen of the defendants gave no testimony whatever, and there was nothing to show that plaintiff had in any way made himself obnoxious or distasteful to them, nor was there anything in the evidence to show that they signed the paper for any other reason than that alleged by plaintiff, which was that he had reported to the company a theft by the night watchman. The first, second, third, twelfth, and thirteenth assignments are sustained.

The trial court had struck out from the testimony a paper given Bausbach by the company's manager at the time of his discharge, stating in effect that he had been discharged through no fault of his

own, but at the demand of employees, because he had reported the dishonesty of one of them. The opinion cites and quotes authorities on the subject of *res gestae*, and concludes that as a verbal statement to the same effect made by the manager to the employee at the time of discharge would have been admissible as a part of the *res gestae*, there was no good reason for excluding the written statement.

The court held that it was unnecessary to consider the remaining assignments of error, as those considered were sufficient to warrant the granting of a new trial. The judgment was therefore reversed.

INTERFERENCE WITH EMPLOYMENT—PROCURING DISCHARGE—CONSPIRACY—*Heffernan v. Whittlsey et al.*, *Supreme Court of Minnesota* (June 26, 1914), 148 *Northwestern Reporter*, page 63.—E. W. Heffernan brought action against F. C. Whittlsey and the railroad company by which he had been employed for damages for procuring his discharge. The plaintiff, who was a telegraph operator, had been in the employ of the company as ticket seller. Whittlsey was station agent in charge of the same station. They had had trouble over the commissions on telegrams, and Heffernan being sustained, Whittlsey retired as agent. Plaintiff continued as operator and ticket seller until he was discharged. The ground for the discharge was that he had sold several tickets to a certain point over a certain route at the higher rate of fare which would be charged over another route and failed to credit the company with the excess received. The railroad company in its answer alleged that it had reasonable grounds to believe, and did believe, that the charges were true. Whittlsey admitted that he caused the charges against plaintiff to be investigated, alleged the truth of the charges and his belief and good faith in the matter. Both denied conspiracy and the other allegations. The jury in the district court of Waseca County gave a verdict for damages against both defendants, and, on motions for judgment or a new trial being denied, the defendants separately appealed, with the result that the judgment as to the company was reversed, while that as to Whittlsey was affirmed.

The court held that the view of the trial court was correct, that the railroad company had a right to discharge plaintiff without cause, and that some other act must, therefore, be proved against it, and the only claim was that it conspired with Whittlsey falsely to charge plaintiff with dishonesty in his position. The only basis for this, since Whittlsey had no connection with the company, was the claim that one Phillips, the detective who procured the evidence which caused the investigation, was in its employ. The jury had returned a special finding that Phillips was so employed, and the court held that the verdict could not stand unless there was suffi-

cient competent evidence to support this finding. The burden of proof of this was on the plaintiff. Whittlsey testified that he employed Phillips on his own account and paid for his services. The officers of the railroad testified that Phillips was not employed by them; that they had no suspicion of plaintiff and knew nothing about any charges or investigation until the evidence gathered by Phillips was presented to them. The defense attempted to get Phillips as a witness, but did not succeed. The admissions of Phillips of employment by the company, which were admitted on the trial, were ruled inadmissible and the other evidence insufficient. Continuing, the court, speaking by Judge Bunn, said:

The admission of these declarations was prejudicial error, as without them the evidence is too slight to enable us to say that it is sufficient to justify the verdict; much less is it sufficient to warrant holding that the error did not affect the result.

We will not discuss the question whether in any event the company can be held liable for doing a lawful act with a bad motive and with malice. If the evidence sustained the charge of a conspiracy between the company and Whittlsey to make false charges against plaintiff's integrity in order to procure his discharge, resulting in his being "blacklisted," it is probable that there would be a liability. *Joyce v. Great Northern*, 100 Minn. 225, 110 N. W. 975. But that there is no liability in the absence of malice can not be doubted. In the present case we find the evidence of a malicious conspiracy entered into between Whittlsey and the company, or joined in afterwards by the company, insufficient to make applicable as against the company the doctrine contended for by plaintiff.

As to defendant Whittlsey, the evidence is sufficient to justify a finding that the charges made against plaintiff were false, and that he acted out of motives of ill will, and with a desire to injure plaintiff. The verdict as against him was justified by the evidence, and we think it should stand, notwithstanding that, as against the company, it must be set aside.

LABOR ORGANIZATIONS—COLLECTIVE AGREEMENTS—EFFECT ON INDIVIDUAL CONTRACT—*Gulla v. Barton*, Supreme Court of New York, Appellate Division, Third Department (Nov. 11, 1914), 149 *New York Supplement*, page 952.—Joseph Gulla sued Lizzie Barton, as surviving partner of a brewery firm, for wages alleged to be due him. On trial of the case at the trial term for Madison County the plaintiff put in his evidence, and at that point a nonsuit was granted on motion of the defendant. The plaintiff appealed, with the result that a new trial was granted.

The plaintiff had worked in the brewery of the defendant for 69 weeks, for which service he had been paid \$9 per week. During this time an agreement was in force between the defendant and the Maltsters' Union, of which plaintiff was a member. This union was a

local body incorporated in New York, and a branch of an international union. Under this agreement the union was to prevent strikes and allow the use of the union label, while the employer was to conduct the business as a union brewery, and to pay all employees \$18 per week. Upon learning of this agreement, the employee asserted that he would bring action for the additional \$9 per week to which he believed himself entitled, and from that time he was paid \$18 per week for his labor. Judge Kellogg, who delivered the opinion of the court, after stating the facts substantially as above, said:

The agreement referred to was a valid contract, which may be enforced in any proper manner. The renewal of the agreement [for a second year] indicates that it was beneficial to the defendant's firm. The union entered into the contract for the benefit of the plaintiff and the other employees in the defendant's brewery, and for the benefit of all union workmen.

It is urged, however, that the plaintiff can not maintain an action upon the agreement, and that he has waived the benefits of it by contracting for himself. Apparently he did not know of the agreement between defendant and the union until a dispute arose between the plaintiff, the defendant, and other employees. The evidence does not show any act of the plaintiff, made with a knowledge of the facts, which would waive the benefits of the contract with the union in his behalf. We have, therefore, a situation where the plaintiff received from week to week the wages contemplated by the contract of employment between himself and the defendant, and his union unbeknown to him had made a contract for his benefit, based upon a separate consideration passing from the union, that he as a member thereof should receive a greater compensation. In payment for the labels and the use of the union name in marketing the brewery product, the defendant had agreed to pay a stated wage to the plaintiff and to the other men working with him as members of the union. The union label had force and value, and the union had strength by reason of the moneys which it received as fees and dues from the plaintiff and other members. The plaintiff is therefore connected with the consideration and was a party intended to be benefited by the agreement. *Smith v. State of New York*, 203 N. Y. 106, 96 N. E. 409. The judgment appealed from should therefore be reversed, and a new trial granted.

LABOR ORGANIZATIONS—INDUCING BREACH OF CONTRACT—INJUNCTIONS—*New England Cement Gun Co. v. McGivern et al.*, *Supreme Judicial Court of Massachusetts* (May 26, 1914), 105 *Northeastern Reporter*, page 885.—The company named brought action against several officers and members of the Journeymen Plasterers' Benevolent Union of Boston, No. 10, to secure an injunction. A master was appointed in the proceeding, who heard the testimony, and the case was reported for decision by the full court on the pleadings and his report. It is stated in the opinion that no exceptions were taken to

the report of the master. He found that the plaintiff company was engaged in the work of mixing and applying to the surfaces of buildings a kind of plaster called gunite by means of a so-called cement gun, which mixes sand, cement, and water, and is operated by two men, one operating the gun or mixing machinery, and the other the nozzle through which the gunite is applied by means of compressed air. Since the work of the nozzle man is very hard, it was customary to have the gun man and nozzle man exchange places every half day, or, if the nozzle man was a plasterer, and the skilled plasterer who usually followed to smooth up the work had learned the nozzle man's duties, for them to exchange. Further facts are given as follows:

The object of the local union, as defined in its constitution, is:

"To unite together all the practical journeymen plasterers working within the jurisdiction of this union for the purpose of securing united action in whatever may be regarded as beneficial to their united interest."

And the master specifically finds that:

"One of the main objects of the International Association and of Union No. 10 is to exercise a control by concerted action over the relations of practical plasterers and those who may, from time to time, require their services."

In the fall of 1912 McGivern, on behalf of the union, told the company's superintendent, referring to a certain building, that the latter would have to employ union plasterers to operate the nozzle, or he would call a strike, and for a time union plasterers were so employed. On February 28, 1913, the gun company entered into a contract with the Old Colony Real Estate Trust to coat with gunite the walls of a building which the trust was erecting. The officers of the union, learning that the gun company did not intend to employ union men, informed Farley, an acting trustee of the trust, that there would be trouble. After part of the interior plastering had been done the plasterers, and also the lathers and metal workers, left and refused to return to work until a contract was made for the outside work to be done by the contractor who was doing the inside plastering, and who would use union men. The gun company wrote a letter to the trust releasing it from its contract. The records of the union showed the receipt of a report from Taylor, one of the defendants and the union's business agent, on the matter of this job, and a vote to take action in the way of striking on the inside work, as was actually done.

It appeared that the gun company had no objection to employing union men, but that the plasterers' union did not recognize the regular workmen using the machinery as plasterers, unless of course they were first ordinary plasterers, and there appeared to be no union to which they were eligible.

The opinion, delivered by Judge De Courcey, further states:

The master made certain specific findings and conclusions, among which are these:

"4. That there is a division of sentiment among members of the unions as to the use of the cement gun and process, the defendant McGivern and others being in favor of its use, and others in the majority being hostile to its use, based upon the fear that it will reduce the work of practical plasterers; that the present attitude of the local union officials is that the union should control the operation of the nozzle of the gun, and not the rest of the machinery; that the demand of the defendants is that the plaintiff employ skilled plasterers only, who are members of the union, to operate the nozzle, as well as to follow after the nozzle in smoothing the surface covered; that the object of the defendants is to compel the plaintiff to unionize its business and to run a closed shop so far as the work of plastering goes, in order to secure all of that work for the members of their union under union conditions; and that it was to accomplish this object that the strikes were called on the job upon the Howard Street building.

"5. That the defendants have conspired together for the purpose of creating and enforcing a boycott against the plaintiff and of hindering and interfering with the prosecution of its business and of injuring the same unless it accedes to their demand.

"6. That the defendants, in pursuance of said conspiracy, are engaged in watching and seeking out work proposed to be given to the plaintiff and in coercing those in control thereof not to make with the plaintiff any contract for such work, and in causing the rescission of such contracts as they discover to have been made with the plaintiff."

"8. That the strikes were strikes against a subcontractor for the purpose of forcing him to coerce the main contractor to coerce the owner of the building to coerce the plaintiff to yield to the demands of the union.

"9. That the defendants have instituted a boycott against the plaintiff and intend to continue enforcing the same, unless prevented from so doing."

The court discussed the law applicable to the case, and expressed its decision that an injunction should be granted, as follows:

Without further recital of the details, it is apparent that the record discloses a combination on the part of the defendants to do acts which the law does not justify, notwithstanding that the ultimate motive by which they were inspired was to advance their own interests. The plaintiff had a written agreement with the owners of the building to apply the coating of gunite. Under our decisions it was unlawful for the defendants, by means of strikes and otherwise, to intentionally induce the owners to take away from the plaintiff its rights under that agreement. Such conduct is not legally allowable as so-called trade competition or defense of self-interest.

A combination to procure a breach of contract is an unlawful conspiracy at common law. [Cases cited.] Further, if Monahan, who had the subcontract to do the interior plastering, also had the contract for this exterior work, his union workmen, unless prevented by their contract of employment, might have gone out on a strike unless

he agreed to give all of the plastering work to them or their associates, because we assume that the application of stucco or cement to the exterior of a building may be found to be work such as practical plasterers have a right to compete for.

But it was not lawful for them to strike to compel Monahan, with whom they had no trade dispute, to compel the general contractor to compel the owner to compel the plaintiff to give to the defendants the work they demanded. In other words, it was an unjustifiable interference with the plaintiff's business to injure others in order to compel them to coerce the plaintiff. *Martin*, *Modern Law of Labor Unions*, sec. 77, and cases cited. The acts of coercion and procuring breaches of contract mentioned in the sixth finding plainly are not justified by the law of this Commonwealth. It is unnecessary to consider further the unlawfulness of such a secondary or compound boycott in view of the full discussion of the subject in the recent opinions of this court in *Pickett v. Walsh*, 192 Mass. 572, 78 N. E. 753 [Bul. No. 70, p. 347], and *Burnham v. Dowd*, 104 N. E. 841 [page 270], in which cases are collected the authorities in this and other jurisdictions.

The plaintiff is entitled to a decree enjoining the defendants from causing or taking part in any boycott against the plaintiff's business, by coercing others, through intimidation or threats, to withdraw from the plaintiff their beneficial business intercourse, and from causing or inciting any sympathetic strike against the plaintiff or its customers for the purpose of preventing the use by the plaintiff of its machinery or process for applying gunite, or for the purpose of compelling it to discharge any of its nonunion workmen.

LABOR ORGANIZATIONS—INJUNCTION—BOYCOTT—*Gill Engraving Co. v. Doerr*, *United States District Court, Southern District of New York* (May 19, 1914), 214 *Federal Reporter*, page 111.—The *Gill Engraving Co.* brought action against William Doerr, individually and as business agent for the New York Photo-Engravers' Union No. 1, and others. The decision disposes of a motion for an injunction against the defendants pendente lite, by dismissing said motion. The controversy had been going on for a number of years between the company and the union, which included most of the photo-engravers in New York. The company at first conducted an open shop, but finally employed only nonunion workmen. In March, 1914, the union took action by which the members refused to do any work for customers of their employers who did not agree to have all their work done in union shops. The *Gill* company appeared to be the only concern of importance affected by this action. The result was that the larger part of the customers of the company left it, so that it lost most of its business and the rest was threatened. In expressing the decision of the court that these facts did not warrant the issuance of an injunction, Judge Hough spoke as follows:

As to the purpose with which defendants have acted, I am of opinion that hostility to the *Gill* company is subordinate and incidental.

All nonunion businesses are treated alike; naturally the greater the business the greater the aggregate dislike, but the quality of hatred is the same, irrespective of size. That Gill company is hurt is gratifying but incidental; the procedure would be the same were complainant nonexistent. Doerr told nearly the whole truth when he wrote, "We will do all of (your customers') work or none." If he had added "and if they can get it done otherwise after this we will think up something else," he would have told the whole truth, because the great and all-absorbing object of defendants' endeavors was and is to get all the work in the trade, or at any rate all the work worth having, for their own members.

Before applying the law to the findings of fact, much that was mentioned in argument may be laid aside. It is not shown that any national statute has been violated; nor that any principle peculiar to national law (e. g., interstate commerce) is concerned; nor that the question presented is complicated by disturbance of the peace, physical trespass, or violence; nor that any Government function (e. g., mail transportation) has been interfered with. These exclusions make the case purely local. The jurisdiction of this court is an incident, depending on the New Jersey incorporation of a business wholly conducted in New York City. Therefore I think it desirable that the law of New York should be applied so far as I am capable of discovering it, unless the decisions of Federal courts superior to this compel different treatment.

It is asserted that the defendant's acts constitute a crime under New York Penal Code, section 580. I decline to consider such violation as ground for injunctive relief *pendente lite*. I am sure that penal statutes are meant to be enforced in criminal courts; their use as bases for injunction is usually illegitimate and always illogical; even the not infrequent fact that prosecuting officers do not enforce the statute against some citizens and rigidly enforce it against others does not justify an attempted administration of criminal law by courts of equity.

It is further urged that the defendants have engaged in a conspiracy or combination in violation of sections 340, 341, General Business Law of New York (the Donnelly Act). It seems plain enough that this is true, but it is settled that for such cause a private party on his own suit is not entitled to injunctive relief. *Irving v. Neal*, 209 Fed. 471 [see p. 162]; *Paine Lumber Co. v. Neal*, 212 Fed. 259 [see p. 164]; affirmed in 213 Fed. (C. C. A., April 7, 1914). Therefore this motion is to be decided by what is usually called common law; i. e., the law of New York as evidenced by the decisions of its courts, supplemented only by the inquiry as to whether any controlling divergence of opinion is found in the appellate tribunals to which this court is more directly responsible. The leading cases in New York [cases cited] all show that the court sits primarily to decide a question of fact, viz: What is the object of the combination?

Applying this rule to this case, it is held that the object of defendant's combination is not to injure Gill company, though such injury has occurred and was foreseen. The object is to increase the power of the union, so as to get more, better, easier, and better-paid work for its members; this is now regarded as laudable.

As to the means employed, everything lately done and alleged as ground for present action consists in threatening strikes. This is the

exercise of a legal right. If defendants have sought to attain a legal end by legal means, that a motive, or part of a motive, was hate of Gill company is immaterial.

That wrong and injury are being done in this matter is plain enough. Why does the law refuse or neglect to correct it? Andrews, J., has, I think, given the best answer in *Foster v. Retail Clerk's Assn.*, 78 N. Y. Supp. 860:

"Injury * * * is never good, but to suffer it may entail less evil than to attempt to check it by legal means. * * * In the last analysis this freedom to commit injury, and the bounds imposed upon it are regulated by what has been thought to be public policy."

The cases cited could be used to show that no bounds have been imposed in New York on wrongs quite as great as that wrought upon complainant.

Defendants have called attention to one fact not found in any case known or shown to me. The Gill company has declared war on the union by discharging all members found in its shop. It is said this should deprive complainant of the aid of equity, and *Sinsheimer v. United Garment Workers*, 77 Hun, 215, 28 N. Y. Supp. 321, is relied on. It is not seen why a person otherwise entitled to protection for his business is deprived of it because he will not employ a certain class of workmen; the nonpreferred workmen are not, therefore, given any right to injure the man who does not prefer them.

In the United States courts for this circuit, *National Fireproofing Co. v. Mason Builders' Assn.*, 169 Fed. 259 [Bul. No. 84, p. 427], is controlling. It accepts the New York cases fully, piously regrets the injuries committed, and writes the epitaph of litigation such as this by declaring that, when equal legal rights clash, equity is helpless. This is true; it would have been just as true to point out that the result of legalizing strikes, lockouts and boycotts under any circumstances must be that those who understand the use of such legal tools can always keep within the law and accomplish their main purpose while inflicting all necessary "incidental" injury.

Considering that the rules as laid down in New York have not been shown to be transgressed, motion denied.

- LABOR ORGANIZATIONS—INJUNCTION—CONSPIRACY—BOYCOTT—
Hoban v. Dempsey, *Supreme Judicial Court of Massachusetts* (Feb. 28, 1914), 104 *Northeastern Reporter*, page 717.—The opinion in this case, delivered by Judge Rugg for the court, in affirming the decree of a single justice dismissing a bill praying for an injunction against the carrying out of a contract between the agents of steamship companies and an organization of longshoremen, states the facts and fully discusses the law applicable thereto:

The plaintiffs are members of a labor union of longshoremen. There are two groups of defendants, the one members of a different labor union of longshoremen, and the other representatives of certain trans-Atlantic steamship companies. The plaintiffs seek to enjoin the defendants from proceeding with an agreement which consists of 30 articles covering most, if not all, of the conditions of labor likely to

arise in the course of such employment. One paragraph provides in substance that all longshoremen employed by the contracting trans-Atlantic steamship lines shall be members of the defendant union whenever such men are available, and whenever such men are not available, then other men may be employed until the defendant union can supply men, but in any event men not members of the defendant union may be employed until the end of the day. It is contended that this clause is so illegal that performance of the contract ought to be enjoined at the instance of third parties. A trial was had before a single justice who, at its conclusion, found that the "contract was freely and fairly entered into between the contracting parties without any purpose or motive on the part of the representatives of the International Longshoremen's Association [the defendant union] to injure the plaintiffs or to coerce them into joining the union or unions, although I am satisfied that the legal effect of the contract may deprive the plaintiffs of employment by the trans-Atlantic steamship lines," and ruled as matter of law that the bill could not be maintained and entered a decree dismissing it. The plaintiff's appeal brings the case here.

It is familiar law that the findings of fact made by a single justice are not to be set aside unless plainly wrong. There was testimony from witnesses from both groups of defendants that their purpose in entering into the contract was not to harm the plaintiffs, but primarily to secure the welfare of each party to it. The steamship agents testified that they had previously dealt with several different organizations or local unions; that the committees representing these bodies were cumbersome in numbers, not small enough to make an effective body, and in consequence, in case of disagreement as to working conditions, there was difficulty in getting an adjustment; and that work was not done expeditiously and well, and it was felt that if an agreement was made with one strong union, under good control and management, it would be easier to get an adequate supply of labor and to settle troubles that might arise; and that no coercion or intimidation was exercised over them by the defendant union, and that they acted voluntarily with a view single to their own interests in signing the contract. The advantage to the defendant union lay in securing a permanent arrangement covering all labor conditions, with preference in employment for their own members. The contradicted direct testimony was to the effect that the dominant motive on the part of both parties was to gain benefits for themselves and in no sense to harm the plaintiffs. Of course the defendants must be presumed to have intended the natural results of their acts, whatever may have been their oral statement respecting it. But it is plain from this summary of testimony that the finding that there was no purpose to injure the plaintiffs or to compel them to join the defendant union was supported by evidence. The tortious acts and motives which frequently have been found to exist in cases involving industrial disputes are absent in the case at bar. There have been no violence, threats, or intimidation.

The question remains whether upon the facts found the plaintiffs are entitled to relief. This is a simple case where employers and a union of employees have made an agreement freely and without any kind of constraint, the terms of which do not require the breaking of

contractual relations with anyone, to the end that all the work of a specified kind be given to the members of a union so far as they are able to do it, for a limited period of time. There was nothing of the boycott about the contract, for an essential element of the boycott is intentional injury to somebody. An agreement of this sort under the circumstances disclosed is within the protection of *Pickett v. Walsh*, 192 Mass. 572, 584, 78 N. E. 753, 6 L. R. A. (N. S.) 1067, 116 Am. St. Rep. 272, 7 Ann. Cas. 638 [Bul. No. 70, p. 747]. It is within the lawful principles as to the conduct of business expounded at length and with great clearness in *Martell v. White*, 185 Mass. 255, 69 N. E. 1085, 64 L. R. A. 260, 102 Am. St. Rep. 341 [Bul. No. 53, p. 958]. See, also, *Mogul Steamship Co. v. McGregor*, 23 Q. B. D. 598; s. c. on appeal [1892], A. C. 25. Those principles are the law of this Commonwealth. It is not necessary to repeat or restate them. They are decisive against the contentions of the plaintiffs.

Although there is evidence which would warrant a finding that the defendant union represents "practically the whole of the longshoremen of the port of Boston," this has not been found as a fact. It is apparent both from the frame of the bill, the trend of the trial as disclosed on the record, and the findings of the single justice, that the hearing did not proceed upon the theory of an unlawful monopoly or a violation of the Sherman Antitrust Act. Those issues were not tried out. Such questions can not be raised at this stage of the case and they are not passed upon.

LABOR ORGANIZATIONS—INJUNCTION—CONTEMPT—PICKETING—EVIDENCE—*Sona et al. v. Aluminum Castings Co., United States Circuit Court of Appeals, Sixth Circuit (June 13, 1913), 214 Federal Reporter, page 936.*—This case was before the court of appeals on a writ of error to the District Court of the United States for the Eastern District of Michigan, to review a judgment by that court sentencing to imprisonment George Sona and one Sudsinski for contempt of court. The persons named were pickets in a strike by a local of the International Molders' Union against the company named. The company had secured a restraining order and preliminary injunction, of which the persons named had notice. It was in evidence that Sona had assaulted an employee of the company, doing him "serious bodily harm," and that Sudsinski, though committing no assault, had been guilty of picketing, impeding, and obstructing the streets, alleys, and approaches to the premises of the company in a threatening and intimidating manner. These acts were regarded as contempt of court, and a sentence of imprisonment was assessed on each party. A number of technical questions were involved as to the sufficiency of the petitions and affidavits which led to the arrest, and while certain defects were apparent, the court held that these had been waived by the subsequent proceed-

ings and the acts of the defendants, and the judgment was affirmed. On the question of evidence the court said in part:

As to the sufficiency of the proof to sustain conviction: As to the assault charged against Sona, no question of the sufficiency of the proof could well be made; there was direct testimony thereof. As to Sudsinski, the question, of course, relates only to the charge of obstructing and intimidating. Complainant concedes that the injunction was not intended to restrain peaceable picketing, and the district judge rightly, as we think, so interpreted the order.

There was express testimony that it was the regular practice for picketers to march back and forth in front of the plant for about an hour each morning and evening, including the time when employees were entering and leaving the plant; that Sudsinski was one of the regular and prominent picketers, usually walking with two or three and sometimes about a dozen picketers in a "bunch"; that the picketers marched either in single file or by twos; and that, during this picketing, there were in the immediate vicinity of the plant from 20 to 50 and sometimes 100 people, apparently largely strikers, walking back and forth. The controlling question was one of fact whether this picketing was peaceable or whether, on the other hand, it was calculated to intimidate and obstruct employees. There was testimony tending to show a purpose to intimidate and obstruct. One of the witnesses testified that he had heard some of those so walking around or standing "hollering different things"; that he at one time heard them "call the other men cattle"; and that Sudsinski was in the crowd that particular evening. Respondent Sona, as a witness, admitted that he knew that "there had been a lot of trouble around there"; that he had heard that men had been assaulted on the street cars on their way to work and been pulled off street cars; that he had heard that the company had to protect its men by cooking and serving meals inside the works. (There was express testimony that the employees were boarded by the company after the strike was declared.) Sudsinski would not unnaturally be as familiar with those general conditions as was Sona. The latter and his associates in the alleged assault followed the employees alleged to have been assaulted from the works to the place where the collision occurred. Judge Angell, who presided at the hearing below and who saw and heard all the witnesses, was convinced, as shown by his finding, that the picketing in question was done in such a manner as to intimidate, threaten, and obstruct the employees of the company, and all persons seeking employment from it. In view of the testimony referred to, we can not say, as matter of law, that the court was not justified in reaching the conclusion arrived at notwithstanding the absence of testimony of actual violence or disorderly conduct on Sudsinski's part.

LABOR ORGANIZATIONS—INJUNCTION—CONTEMPT—VIOLATION BY INCITING OTHERS TO VIOLENCE—*United States v. Colo et al.*, *United States District Court, Western District of Arkansas* (Sept. 1, 1914), 216 *Federal Reporter*, page 654.—On May 9, 1914, the United States District Court for the Western District of Arkansas, in the case of

Mammoth Vein Coal Mining Co. v. Hunter et al., rendered a decree enjoining the defendants in that case, and all other persons, from interfering with the property of the company or with its nonunion miners. On the 13th of June the company filed a motion for an attachment against several striking union men for violation of the decree, and on the 20th filed a similar motion against still others. The cases against all the defendants who had been arrested were tried together. On July 27, after the evidence on the original cases had been taken and the cases submitted, a motion was made to reopen them to allow additional testimony to be introduced, growing out of an alleged attack on mine No. 4 by an armed mob, the killing of two of the company's employees, and the burning and blowing up of its property. The motion was sustained as to P. R. Stewart, but was denied as to all others. Motions were then filed for attachments for contempt against John Manick, Frank Gripando, Loyd Claborn, Pink Dunn and George Burnett, charging them with having been members of the mob. Testimony was then introduced as to the occurrences of July 17.

Three of the defendants were charged with intimidation of certain miners on a train going to mine No. 4 on June 15. After some review of the testimony in regard to this, Judge Youmans, who delivered the opinion of the court, said:

After a consideration of all of the testimony, I am convinced that Burris, Robinson, and Manick did use threats on that occasion against the employees of the company and endeavored to intimidate them, and that in so doing they knowingly violated the court's orders. In my opinion the presence of armed guards and a deputy United States marshal, who met the train at the stopping point, alone prevented an attack on the employees.

As to a charge against Robinson the court said:

Sandy Robinson is separately charged with having cut some sacks of feed belonging to the Mammoth Vein Coal Mining Co. on the platform at Prairie Creek. This was on May 18. The feed was being unloaded from a Midland Valley car for the purpose of being taken to mine No. 4. The testimony is that Robinson was there and engaged in an altercation with a mine guard, and that he took out his pocket-knife and cut five sacks. I am convinced that this is true, notwithstanding his denial, and the testimony of witnesses tending to show that he was not there.

With regard to the nature of the charges against Stewart, Judge Youmans said:

The defendant P. R. Stewart, at the time of the occurrences herein mentioned, was president of District No. 21 of the United Mine Workers of America. He was present during the trial of the case of Mammoth Vein Coal Mining Co. v. Hunter et al. He heard all the testimony, sat with counsel for the defendants during the trial, and heard the opinion of the court when it was handed down. He therefore had full knowledge of the issuance of the injunction and its

terms. The charge against him consisted of certain statements made by him. On May 25 Stewart went from Fort Smith to Midland in an automobile in company with Paul Little, State prosecuting attorney. While at Midland, Stewart made some statements in front of McGee's drug store.

After quoting from the testimony of Little and other witnesses and of Stewart himself as to this occurrence, which testimony showed that Stewart suggested that the strikers should be armed and that he would assist them in procuring arms, Judge Youmans said:

It will be seen that Mr. Stewart did not deny any of the testimony given by the witnesses as to what he said in front of McGee's store at Midland. He explains it by saying that he "had information that a guard named Bailey, and some other guards, had insulted some girls," and that that made him pretty mad. He said:

"It was my idea to arm the men in the Hartford Valley so that they could protect their own homes, and so that they could protect the women and children."

There was nothing, so far as the attitude of the State and county officers towards offenses committed by employees of the Mammoth Vein Coal Mining Co. was concerned, to warrant him in assuming authority to supplant the legal methods for the enforcement of the law. He made a speech at Hartford the next night at a gathering at which Mr. Little was present.

After quoting the testimony of Little to the effect that the remarks of Stewart on this occasion were similar to those on the previous day, the opinion continues:

Stewart made this statement at Hartford more than 24 hours after he had made the statement in front of McGee's store at Midland. If the first statement was made in anger, the second was made after his temper had had ample time to cool. It was made after the prosecuting attorney had, in response to inquiries, stated the information he had gathered. There was no reason to presume that the officers and the courts were not able to cope with all violations of the law. Notwithstanding this, Mr. Stewart saw fit to repeat his threat, and that, too, in the presence of the prosecuting attorney, who permitted it to pass unrebuked.

The conviction can not be avoided that the real object of Stewart was to prevent the operation of the mine as an "open shop."

The coal company had determined to run its mine as an "open shop." The union was opposed to such operation. If the coal company had no legal right to run its mine as an "open shop," there must have been some way, by orderly procedure in the courts, to prevent it. The union was endeavoring to prevent such operation, but not by legal proceedings. If it could accomplish its purpose by legal means, no one had a right to complain. Its first effort was not by legal means. On the 6th of April its members and sympathizers assembled on the company's property, assaulted its employees, and compelled them to stop work. That method was unlawful. At the instance of the coal company, all persons engaged in that attempt, and all others, were enjoined from in any manner interfering with the company's property or employees. Notwithstanding the injunction, assaults were threatened. Shots were fired into the mine

inclosure. It was necessary to keep armed men about the mine. From some time in June to the 15th of July deputy United States marshals were stationed at the mine. Even when men went to Midland for supplies, it was necessary for them to go armed.

Certain evidence was then reviewed, after which the court said:

The conclusion is unavoidable that if the members of the union had obeyed the orders of the court, or if the officers of the county had shown the same disposition to prosecute violations of the law when committed by union men as when committed by employees of the company, it would not have been necessary for the latter to carry arms.

It was the policy of Stewart, according to the argument of counsel, to have the union maintain such an attitude as would make the employment of armed guards, if not actually necessary, at least apparently so from the viewpoint of the coal company, and thus cause to be added, to the usual cost of the production of coal, such sum, by the expense of maintaining guards, as would result in loss to the company, and bring about the suspension of operation as an "open shop." According to that plan, the company was to be kept in a constant state of apprehension of an attack to the extent that it would continue to maintain guards, but it was in fact the intention of Stewart that the attack should never be made. Such an experiment in tight-rope walking could not result otherwise than in failure.

Putting on Stewart's acts and speeches the construction most favorable to him, he incited to action forces which he could not control. Occupying a position in which his influence could have operated powerfully for the maintenance of law and order, he saw fit to so deport himself as to incite to and encourage mob violence. He knowingly played with fire with a reckless disregard for consequences. His conduct was at variance with his declaration made on the witness stand, of respect for the court's order and his intention to be governed thereby.

Language or conduct intended to incite others to a violation of the court's order is a contempt of court. *U. S. v. Debs*, 64 Fed. 724; *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900; *U. S. v. Haggarty*, 116 Fed. 510 [Bul. No. 43, p. 1291]; *U. S. v. Gehr*, 116 Fed. 520. The effect of Stewart's policy, speeches, and conduct is seen in the events of the 17th of July.

The occurrences of the date just mentioned, when the attack by the union men on mine No. 4 took place, were reviewed, and the evidence of participation by the various defendants taken up. The conclusion reached is shown by the following quotation from the opinion:

The testimony on behalf of Claborn is sufficient to raise a reasonable doubt in his favor, and he will be discharged. Burris, Robinson, Stewart, Manick, Gripando, Dunn, and Burnett will be adjudged guilty of contempt.

The term and place of imprisonment of each is designated at this point and the opinion concludes as follows:

It is proper to say, in this connection, that a conviction upon a charge of contempt for an offense which is also a crime does not bar a prosecution for the crime.

LABOR ORGANIZATIONS—INJUNCTION—RIGHT TO RELIEF—MANDAMUS DIRECTING ISSUE—PEACEABLE PARADING—*Baltic Mining Co. v. Houghton Circuit Judge, Supreme Court of Michigan (Dec. 10, 1913), 144 Northwestern Reporter, page 209.*—The Baltic Mining Co. and others had procured from the circuit judge of Houghton County a preliminary writ of injunction restraining certain acts of violence and intimidation charged in their original bill of complaint. A few weeks later the judge issued an order dissolving the writ previously granted by him, on the ground that it had been unadvisedly issued, since he did not have the power to take such a step. The present proceeding was to procure from the State supreme court a writ of mandamus directing the circuit judge to set aside and vacate this order of dissolution, thus leaving the preliminary injunction in force. This writ was issued on hearing before the court, some explanation also being made as to the effect of the original injunction so reinstated. •

The original bill of complaint on which the injunction was issued was directed against the Western Federation of Miners, its district and local unions and their officers and members. This complaint stated that when a general strike was inaugurated in July, 1913, upward of 4,000 miners employed by the complaining company, not allied with the union, refused to participate in the strike and sought to continue labor, but were interfered with by threats and violence until work was suspended in many places. Allegations were made of assaults, picketing, threatening parades, riotous and threatening gatherings in large numbers, and "in instances too numerous to mention or specifically set forth" of assaults and beatings of employees of the petitioners. The defendants filed no answer to this complaint, but moved a dissolution of the temporary injunction granted, on the ground that the allegations in the complainants' bill were too general in their nature, not properly verified, and not supported by any showing on which a temporary injunction should or could have been granted. The court adopted this view and dissolved the injunction, but reserved the right to issue a restraining order without notice, upon showing made by affidavits by the complainants. About a week afterwards affidavits were submitted setting forth the conditions that had developed immediately after the dissolution of the injunction. The following is quoted from the opinion of the court in this connection:

The affidavits, 84 in number, are freighted with narratives of rioting, acts of violence, threats, insults, and intimidation of men, women, and children too numerous to attempt to repeat here, fully substantiating and showing continuation of the unlawful conduct by defendants alleged in complainants' bill. The affiants testify positively from personal experience and observation. The affidavits are not only made by employees of complainants and their families,

but by others, officials and private citizens, in many walks of life. They tell of the strikers, members of the defendant federation, and their sympathizers parading with noise and insults and threats, attacking, assaulting, and driving back peaceable workmen going to their employment, of men irregularly grouped together in bands of from ten to a dozen to mobs of six and seven hundred at various times both day and night, with threatening demonstrations and words, of their laying in wait for and attacking employees of complainants as they went to and from their work, assaulting them with clubs and rocks, snatching from them their dinner pails and trampling them upon the streets, applying to them vile and vulgar epithets, threatening violence not only to themselves, but to their families, to kill, to dynamite, and to blow up their houses. They tell of peaceable citizens of long residence in those communities, with their established homes and families there and whose only offense was an attempt to continue work where and as they had been employed for many years, being assaulted on the highways, mobbed, their clothing torn from them, spit upon, coal ashes and slops thrown on them, bottles and rocks hurled at them often inflicting serious injuries, even in sight of their wives watching from their homes, of boarding houses and homes of nonunion men being surrounded and stoned, with taunts and insulting threats, of women and girls struck with missiles and injured on such occasions, of mobbing trains, defying the civil authorities, resisting and assaulting officers, of resort to firearms in which employees of complainants and others were wounded, and other overt acts of lawlessness, disorder, and violence clearly substantiating the allegations in complainants' bill, and fairly indicating concerted action on the part of defendants to promote the strike by an aggressive policy of force and intimidation. Upon such showing the trial court again refused to grant any relief, and this application for a mandamus followed.

The court then took up the grounds on which its conclusion was reached that the injunction should not have been dissolved, using in part the following language:

Briefly stated, respondent's answer is that, though disposed to grant a restraining order, he had no power to do so because of the insufficiency of the bill.

The question before us, therefore, is, primarily, one of law. The return shows respondent exercised no discretion as to the injunction, holding, as a matter of law, that he had no power to do so.

The bill is certainly not demurrable. It states a case with sufficient averments and general allegations of facts which, if sustained by proof on final hearing, would entitle complainants to the relief asked.

The contention that the bill of complaint is not properly verified is untenable. As before stated, it is sworn to positively by seven affiants of their own knowledge, with the usual reservation found in the form of such jurats, "except as to matters therein stated upon information and belief," and the material allegations in the bill essential to entitle complainants to relief if proven are stated without qualification.

The chief charge of insufficiency against the bill is that its averments are too general, more in the nature of conclusions than distinct statements of facts, and state no specific acts of particular

individuals, with time, place, and attending circumstances such as good pleading demands. While it is permissible, and sometimes requisite, to set forth the facts and acts relied on fully and with particularity in a bill, as a rule general certainty is sufficient in a pleading in equity. It is not required to relate the details. "It is not necessary to charge minutely all the circumstances which may prove a general charge; for those circumstances are properly matters of evidence which need not be charged to let in proof." Story, Eq. Pleading, section 28. As a pleading this bill contains a sufficient, though general, statement of the essential ultimate facts involved in the controversy, which, taken as true, confer on the court authority to grant permanent relief by injunction, and if necessity is shown, temporary relief until final hearing. We are impelled to hold that the respondent misconstrued the law and his official duty, under the showing made.

When such an application is made for preliminary protection, the questions to be passed upon and determined from the showing are only the necessary factors in granting or denying a temporary restraining order. "It is not necessary that the complainant's rights be clearly established, or that the court find complainant is entitled to prevail on the final hearing. It is sufficient if it appears that there is a real and substantial question between the parties, to be investigated in a court of equity, and, in order to prevent irreparable injury to the complainant before his claims can be investigated, it is necessary to prohibit any change in the conditions and relations of the property and of the parties during the litigation." *Goldfield Consol. Mines Co. v. Goldfield M. U.* No. 220 (C. C.), 159 Fed. 513 [Bul. No. 78, p. 586]. And this is especially true when not only the safety of property but the peace of a community and the choice of action and even the lives of peaceable citizens and their families, when in the pursuit of their lawful avocations, are menaced by disorder, threats, and violence.

The power and duty of courts of equity to restrain, on proper application, conspiring labor organizations and their members, as well as others in the conspiracy, from molesting by violence, threats, and intimidation, or any other unlawful interference with, those engaged in any lawful employment and those employing them, is too well established and too thoroughly reviewed by our own authorities to call for citations from other States or discussion here.

We are constrained to hold that the writ prayed for must issue herein, directing respondent to vacate his order setting aside and dissolving the temporary injunction theretofore granted by him and continue the same as indicated in the order to show cause issued by this court, until final hearing of said injunction suit, or until changed conditions shown to the court render the same no longer necessary. This court, as such, is not concerned with strikes or their continuance, as such. Courts do not grant injunctions to restrain strikes lawfully conducted. They are only concerned with them when lawlessness and acts of violence and intimidation develop from them.

To avoid any misapprehension, let it be understood, and, if necessary, further provided, that parades directed to and loitering at and around the premises of complainants or the homes of their employees, and so timed and conducted as to meet and obstruct such employees

going to and from their work during morning and evening changes of shift, and any and all meeting and parading accompanied by acts of violence, threats, insults, or hostile demonstrations toward complainants or their employees either by act or word are in no sense "peaceable meeting and parading," but directly to the contrary, and all such conduct must be regarded as strictly within that provision of the injunction prohibiting defendants "from impeding, obstructing, molesting, or disturbing the employees of the said complainants or any of them by threats, violence, insults, gatherings, parades, or any form of intimidation whatsoever or by any acts of any kind calculated or intended as or for intimidation of the said employees or any of them."

Let a writ of mandamus be issued as above indicated.

LABOR ORGANIZATIONS—INTERFERENCE WITH EMPLOYMENT—CONSPIRACY—BOYCOTT—INJUNCTION—*Clarkson v. Laiblan et al.*, *St. Louis Court of Appeals* (Dec. 2, 1913), 161 *Southwestern Reporter*, page 660.—James L. Clarkson brought action in equity for an injunction against Frederick Laiblan and others, officers of Local Union No. 1 of the International Brotherhood of Composition Roofers, Damp and Water Proof Workers of St. Louis, Mo., which is affiliated with the Building Trades Council of St. Louis. Clarkson had been a member of the local union from 1903 to 1906, at which time he went into the roofing business on his own account and became an employer, which fact terminated his membership in the union. In January, 1909, he sold out his business to the St. Louis Roofing Co., and the company attempted to employ him as a foreman. Patrick F. Garvey, the business agent of the local union, was present at the shop on the morning of February 21, 1909, when Clarkson was handed a slip of paper assigning him to the position as foreman of a gang of roofers. After ascertaining that not all the union men present were to be put at work, Garvey protested against work being given to Clarkson, with the result that the order to the latter was recalled. On March 16, 1909, Clarkson entered into a contract with the St. Louis Roofing Co. to roof a number of buildings as a subcontractor. Thereupon Garvey threatened a strike, and this contract was as a result canceled by the St. Louis Roofing Co. Further facts, and the grounds for the decision affirming the decree of the St. Louis circuit court for the plaintiff, are stated as follows in the opinion written by Judge Nortoni:

It appears that there are about 225 roofers in all in St. Louis and all but about 20 of them belong to the union. Nearly, or about, one-half of this number were in the employ of the St. Louis Roofing Company at the time. Moreover, it appears that 90 per cent of all the men engaged in the various building trades, save bricklayers, are members of the various building trades local unions, which are affiliated

together. It does not appear that any of the defendants personally, save Garvey, interfered with the plaintiff, or that they personally threatened his employer, the St. Louis Roofing Company, but the case concedes that Garvey was the business agent of the union of which the other defendants were officers. Among other things, it was the duty of Garvey to see that none but union men were permitted to work, without special permission from himself or the union. Among other things, plaintiff testifies that Garvey informed him that he "could stay at his own little business,"—that is the business that he had theretofore sold out. And it appears clear enough that Garvey's threats communicated first to the foreman and then to the manager of plaintiff's employer caused him to lose his position as a foreman of the gang, and afterwards occasioned the cancellation of his several contracts. None of the defendants took the stand, and the case rests alone upon the evidence of plaintiff and his several witnesses, who fully corroborate him throughout. Obviously the court did not err in decreeing a perpetual injunction against all of the defendants on this evidence. It is certain that a man's occupation, whether it be that of a roofer, laborer, or what not, partakes of the character of property, and he is entitled to have it protected by the process of injunction, when other persons confederate and conspire to and actually interfere with its prosecution in such a manner as to work substantial injury upon him. The evidence is abundant that Garvey was acting within the scope of his authority as business agent of the union, and carrying out both the letter and the spirit of its rules and regulations in so doing. It is certain that neither one man nor a multitude organized together have the right to coerce an employer, through threats to impair his business or cause a loss to him, to discharge another person from his services. See *Swaine v. Blackmore*, 75 Mo. App. 74. Here, through the organization of the union and the membership therein were entirely proper and lawful, the end sought to be achieved in coercing plaintiff's employer to discharge him and to terminate and refuse further beneficial business intercourse with him was unlawful. Therefore, the confederation being present, a conspiracy against the rights of plaintiff appears well established.

LABOR ORGANIZATIONS—INTERFERENCE WITH EMPLOYMENT—INJUNCTIONS—DAMAGES—*Fairbanks et al. v. McDonald et al.*, *Supreme Judicial Court of Massachusetts* (Nov. 24, 1914), 106 *Northeastern Reporter*, page 1000.—The plaintiffs in this case claimed membership in a voluntary unincorporated local trade-union, while defendants were members and officers of another local trade-union. The purpose of the suit was to restrain defendants from interfering with the employment of plaintiffs and other members of their local union and for damages for unlawful interference with their employment resulting in their discharge by their employer. A decree was rendered in favor of the plaintiffs in the superior court of Essex County, and the defendants appealed. The decree was affirmed, the reasons given

being shown in the opinion delivered by Judge Sheldon, which is largely quoted herewith:

In addition to the facts found by the master, we are clearly of opinion that it must be inferred from the facts reported by him that Atwill and Gage, acting for the members of their union, intended to compel the plaintiffs' employers to discharge the plaintiffs and to refuse to give to the plaintiffs any further employment, and that this was done, not for the purpose of securing for the members of the defendants' union all the work that was to be had from these employers, but to deprive the plaintiffs of employment and make it impossible for them to obtain their livelihood by their labor, unless they should become members of the defendants' union upon whatever onerous terms the latter should choose to impose.

The defendants did not say to their employers, "You must give us all your work or none of it," as they might have done without exceeding the limits of allowable competition. They required their employers to refuse absolutely to employ the plaintiffs, for the purpose of putting upon the latter an unfair pressure. In contemplation of law, they acted from malice toward the plaintiffs, and did to them an unlawful injury, by causing their exclusion from the labor market.

This case resembles in principle *Burnham v. Dowd*, 217 Mass. 351, 104 N. E. 841 [see p. 270], and much of the reasoning of that decision is applicable here.

The main object of the bill is to protect the plaintiffs from the irreparable injury to which they are exposed by the unlawful acts of the defendants. It is only incidentally that the plaintiffs seek to recover damages for the losses already caused to them.

Substantial damages have been given only to the plaintiff Fairbanks. Upon the findings of the master we can not say that he was not entitled to the sum allowed him. *Burnham v. Dowd*, and cases cited. He has not however been given damages for the permanent loss of access to the labor market, and is not barred from having further relief by way of injunction.

It is too plain for discussion that neither one of the plaintiffs was required, before bringing this bill, to seek relief within the defendants' union or to exhaust any remedy that might there have been available. The decree appealed from contains however some minor errors, which ought to be corrected. So modified, the final decree appealed from must be affirmed.

LABOR ORGANIZATIONS—LEGALITY—INTERFERENCE WITH EMPLOYMENT—CONSPIRACY—*Mitchell et al. v. Hitchman Coal & Coke Co.*, *United States Circuit Court of Appeals, Fourth Circuit* (May 28, 1914), 214 *Federal Reporter*, page 685.—The company mentioned brought suit against John Mitchell and others to restrain them from attempting to organize the company's mine workers and to induce them to join the union known as the United Mine Workers of America. The United States District Court for the Northern District of West Virginia issued a decree granting a permanent injunction. This decision is found in 202 Fed. 512, and noted in Bulletin No. 152, pages

137-151, where the history of the controversy between the company and the United Mine Workers is quite fully detailed. In the present decision the decree was reversed, with instructions to dismiss the suit. After reviewing the facts, Judge Pritchard, who delivered the opinion, expressed the court's idea of the importance of the matter as follows:

That it is advisable to secure a just and fair solution of the labor problem by which equal protection to capital and labor may be secured is undoubtedly the wish of every patriotic citizen regardless of his station in life. That one who toils for his living is justified in employing all lawful methods for the preservation of his right as an American citizen to secure fair remuneration for his services is established by the Federal and State courts. That such a person also has the right to join with others similarly situated, in order to promote their welfare as a class, is also established as the law of the country. But while this is so, it is equally well settled that the mine owner is entitled to the full protection of the law in the conduct of his business and the enjoyment of his property.

After quoting from the opinion of Judge Dayton in the district court, the court says as to the lawfulness of labor organizations:

The learned judge insists that the common law under which labor organizations have been declared unlawful in England is still in force in West Virginia, and that therefore this organization is unlawful, unless by statutory enactment the common law has been modified or abrogated to such an extent as to allow an organization of this kind to exist in that State.

We do not deem it profitable to enter into an extended discussion of this phase of the question, believing as we do that, while there are decisions at common law by the courts of England in support of the contention that labor unions are unlawful, yet such rule has not prevailed in this country, except in a few of the earlier decisions of our courts. Even in England combinations of this character were only proceeded against, as a general rule, when they were criminal or prohibited by statutory law.

Next the purposes of the union are discussed, and the decision made that they are lawful. The following are extracts bearing upon this point:

The court below in its opinion referred to a number of provisions contained in the constitution and rules of this organization which in its judgment rendered the same unlawful; the first being that a member is required to promise that he will cease to work whenever called upon to do so by the organization.

A careful examination of this provision fails to show on its face anything unlawful, while on the other hand common experience teaches us that a rule of this character is essential for the preservation of labor organizations. Without a provision of this kind, there would be no power of securing concert of action; no means by which united effort could be secured for the accomplishment of the aims and purposes of the organization.

It is also insisted by the court below that under these rules the operator has no right to employ nonunion men even if he should desire to do so.

If the United Mine Workers of America in pursuance of this rule should resort to coercion, threats, intimidation, or violence for the purpose of preventing the mine owner from employing nonunion men, such conduct would be unlawful, and the courts would promptly restrain anyone who might be a party to such transaction. Indeed, it would be unlawful for an individual to undertake, by coercion, intimidation, or threats to prevent a mine owner from exercising his own free will as to the employment of nonunion laborers, or as to any other thing which he might deem necessary to be done in order to protect his property rights.

However, in this instance, the plaintiff has adopted a policy by which only nonunion men may be employed. If the plaintiff may for the purpose of protecting its interests adopt a policy by which only nonunion men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests? If the plaintiff is to be protected in the use of such methods, and the defendants are to be restrained from using lawful methods for the purpose of successfully meeting the issue thus raised by the plaintiff, then indeed it may be truthfully said that capital receives greater protection at the hands of the courts than those through whose efforts capital in the first instance was created. But such is not the law, and when we consider the testimony as respects the conduct of the defendants, at and before the institution of this suit, we are of the opinion that the plaintiff has not by a preponderance of the evidence shown that these defendants employed unlawful methods as alleged in the bill.

It further appears that the plaintiff is paying the nonunion men the same wages that are being paid union men. Therefore, under these circumstances, is it not as reasonable to infer that the plaintiff is endeavoring to place the laborers of that section in a position where it would be master of the situation, as it is to infer that the defendants are seeking to destroy the business of the plaintiff? While it is true that the plaintiff has a perfect right to refuse to employ union labor, is it not equally true that union labor, as we have stated, may by the employment of legitimate means do that which is necessary to keep its forces together?

Shutting down a mine by calling out men in obedience to their obligation is what is known as a "strike." Rule No. 10, which relates to strikes, is in the following language:

"No strike shall take place at any time under the jurisdiction of subdistrict 5 of district 6, except for specific violation of agreement. That is, screens irregular; failure to pay on pay day without explanation; violation of mining laws by operators, or reductions of scale wages until the grievance of the mine affected has been thoroughly investigated by the officers of district 6, U. M. W. A. and operators interested. Any man or men that cause a stoppage of work at any mine in violation of this rule, shall be subject to dismissal at the will of the company."

This very clearly sets forth the causes wherein strikes are justifiable. The evidence in this case fails to show that these defendants have at any time tried by violence, intimidation, or fraud to induce the union men to quit working for the plaintiff.

A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful.

At the final hearing the plaintiff [company] introduced certain documentary evidence bearing upon the question as to whether the defendants [Mitchell and his associates] had entered into a combination with operators and coal producers in Ohio, western Pennsylvania, Illinois, and Indiana, competitive fields, to compel the plaintiff to submit to contractual relations with the United Mine Workers of America relating to the employment of labor and production, contrary to the wishes of plaintiff.

The documentary evidence consisted of the declarations of a small percentage of the miners and operators who were present at these conferences. It was not shown that either before or after these declarations were made that those participating in the conference had entered into a conspiracy for an unlawful purpose. Indeed, these declarations were brought out in response to a proposition on the part of the miners for an increase of wages. A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of the mines of that State by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine.

As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy.

The opinion of the court below is based upon the ground that the defendants, and those associated with them prior to and at the time of the institution of this suit, had formed themselves into a conspiracy for the purpose of unionizing the plaintiff's mines without its consent, and for violation of the constitution, common and statutory law of West Virginia.

Chief Justice Fuller, in *Pettibone v. United States*; 148 U. S. 197, 13 Sup. Ct. 542, defined "conspiracy" as follows:

"A 'conspiracy' is * * * a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

Being of opinion that this is a lawful organization, it necessarily follows that, in order to entitle the plaintiff to the relief which it seeks, it must be made to appear that at, and before the institution of, this suit, the United Mine Workers of America were attempting to carry out the purposes of their organization by the use of unlawful means.

Considerable evidence was introduced by the plaintiff as to what occurred in the vicinity of the plaintiff's mine. [Quotations are here made from the evidence.]

While it is not denied by the defendants that they sought by peaceable methods to induce those employed by the plaintiff to join

the union, yet they stoutly contend that at no time since the mine has been operated as a nonunion mine have they employed unlawful methods.

While Hughes was a representative of the organization, his authority only permitted him to use argument and persuasion to induce the employees to become members of the organization.

Even though it appears by the evidence in question that the conduct of the defendants [United Mine Workers] was reprehensible in the highest degree at the time that the mine was being run on a union basis, we conceive of no possible theory upon which such evidence would be competent as affecting the conduct of the defendants in this instance, inasmuch as the evidence fails to show that after the mine began to be operated on a nonunion basis that they united and conspired to use violence, intimidation, and coercion to prevent the plaintiff from operating its mine. In other words, this record clearly shows that the plaintiff for the avowed purpose of protecting its interests adopted a policy by which its mines were to be operated on a nonunion basis. At the time of the adoption of this policy by the plaintiff, the negotiations between plaintiff and defendants ceased, therefore the question now presented is: Have not the defendants the right as an organization to use all means within their power to organize miners into unions, provided that in so doing no unlawful methods are employed?

As to the view of the court below that the Sherman antitrust law had been violated by the United Mine Workers, the opinion reads:

The court below, among other things, expressed the view that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, under what is known as the Sherman antitrust law.

We do not deem it necessary to discuss this proposition at any great length. In the first place, there is nothing in the pleadings to raise the question as to whether the United Mine Workers of America are liable under the statute in question, and any evidence that may have been introduced bearing upon this point was therefore immaterial and should have been rejected. There is another reason why we think that this question can not under any view of the case arise in this controversy, to wit, we do not understand that a private person can question the validity of a combination or conspiracy under the Sherman antitrust law for the purpose of having the same declared to be unlawful.

The court below also reached the conclusion that the defendants have caused and are attempting to cause the nonunion members employed by the plaintiff to break a contract which it has with the nonunion operators. The contract in question is in the following language:

"I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run nonunion while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Com-

pany I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company, that I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read."

It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employee continues to work for the plaintiff he shall not join this organization, nevertheless there is nothing in the contract which requires such employees to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employees under this contract, if they deem proper may, at any moment join a labor union, and the only penalty provided therefor is that they can not secure further employment from the plaintiff. Therefore, under this contract, if the nonunion men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case, it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the nonunion miners to become members of their organization.

Under these circumstances, we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization.

In concluding the opinion, Judge Pritchard said in part:

It should be understood once and for all that, so long as capital employs legitimate means for the protection of property rights, it is to be accorded the protection of the law; but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection. Likewise, it should be definitely understood that the laboring men have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living; give their children moral and intellectual training; and secure the enactment of legislation requiring mine owners to adopt such methods as may be necessary to keep their mines in a sanitary condition, and, above all, to adopt methods to minimize, as much as possible, the occurrence of the awful catastrophes by which so many human lives have been lost.

For the reasons stated the decree of the court below is reversed and the cause remanded, with instructions to dismiss the bill.

LABOR ORGANIZATIONS—LEGALITY—INTERFERENCE WITH EMPLOYMENT—STRIKES—*Bittner et al. v. West Virginia-Pittsburgh Coal Co., United States Circuit Court of Appeals, Fourth Circuit (May 28, 1914), 214 Federal Reporter, page 716.*—The questions involved in this action were the same as those in *Mitchell et al. v. Hitchman Coal & Coke Co., 214 Fed. 685* [see p. 315]. In this case, however, the evidence showed that violence, intimidation, and coercion were resorted to by the defendants in the case. The district court had granted a preliminary injunction restraining them from the acts of violence, etc., and also from the use of persuasion and other peaceable methods, and from aiding the striking miners by furnishing them money from what was known as a relief fund, etc. The defendants made a motion to modify the decree so far as it restrained them from the peaceable methods, and, this motion being disallowed, appealed. Judge Pritchard, in expressing the court's decision that the decree should be thus modified, said:

We think the decree of the lower court in so far as it restrains the defendants from any acts of violence, intimidation, and coercion is proper in view of the evidence. While this is true, nevertheless we are of opinion, for the reasons stated in the case of *Mitchell v. Hitchman Coal & Coke Co.*, that the court below erred in entering that portion of the decree whereby it is provided that these defendants shall be restrained from resorting to peaceable and lawful methods for the purpose of organizing the miners of that section.

It follows that the decree of the lower court should be modified by adding thereto the following proviso:

Provided, however, that this restraining order is not intended to prevent any of said employees of the plaintiff company from quitting work for said plaintiff and from severing the relations of master and servant existing between the plaintiff and said employees at the time this order is entered, or from striking or persuading his fellow employees to quit work and strike for their mutual protection and benefit.

Provided, further, that this injunction is not intended to prevent any employee of the plaintiff who had ceased to work for said plaintiff to use persuasion, but not violence, to prevent other men from accepting employment with the plaintiff in his place.

Provided, further, that this injunction is not intended to prevent the employees of plaintiff from joining any lawful labor union and from receiving the nonemployment benefits paid by such union.

Provided, further, that this injunction is not intended to prevent the defendants, their associates, agents, and fellow members of the United Mine Workers from supporting any of plaintiff's former employees who have ceased to work for said plaintiff, nor is this injunction intended to prevent any member of the labor union to which such employees ceasing to work for the plaintiff belong from legally assisting said employee in securing better terms of employment and in endeavoring to persuade, without violence, any other laborer from taking the place of said striking employee.

The decree of the lower court as thus modified is affirmed.

LABOR ORGANIZATIONS—LIBEL BY PRINTING IN PAPER PUBLISHED BY ASSOCIATION—DAMAGES—*United Mine Workers of America et al. v. Cromer, Court of Appeals of Kentucky (June 19, 1914), 167 Southwestern Reporter, page 891.*—Reid Cromer brought action against the United Mine Workers of America and G. B. Reed, to recover damages for libel. Judgment in the circuit court for Laurel County was in favor of the plaintiff in the sum of \$500, and the defendants appealed, the appeal resulting in the judgment of the court below being affirmed.

The first ground assigned for reversal was that the United Mine Workers of America is not a corporation, but a voluntary association, and is not therefore suable in the name of the association. It was held, however, that this defense was waived by not being raised in the proper manner, the association having answered to the merits of Cromer's pleas.

As to the case itself, Judge Clay, in delivering the opinion of the court, spoke as follows:

The libel complained of was printed in the United Mine Workers' Journal, a newspaper published at Indianapolis, Ind., under the auspices of the United Mine Workers of America, and is as follows:

"The strike breakers in our little strike here are not practical men. They are here to defeat our purpose. They will not be desirable when we return to work, and will be ordered peremptorily by their employer to move on, go elsewhere over to Indiana, Illinois, etc., to again illegitimately enjoy benefits and conditions established by union, good and honest men. Believing that it behooves us to keep you readers informed as to who these men are, we are concluding with a list of the names of the detestable scabs and blacklegs whom we want you to be continually on the lookout for."

In the list of names printed in the paper is the name of Reid Cromer. It appears from the petition that Reid Cromer was a miner. There was a strike in the vicinity in which he was employed. He and his associates did not participate in this strike, but continued to work. It is further charged in the petition that the defendants falsely and maliciously, and with the intent and purpose of injuring plaintiff in his calling and occupation as a coal miner, made the publication complained of. After setting out the publication, it was alleged that defendants, by the use of the words "detestable scabs and blacklegs," meant that plaintiff and his associates were detestable cheats and gamblers, and these words were so understood by their acquaintances and the public generally; that the effect of such publication was to bring them into the contempt, hatred, ridicule, disgrace, and odium of their acquaintances and the public. It was further charged that the publication was intended to and did prevent plaintiff from obtaining employment in his occupation as a coal miner, and that he had been damaged in the sum of \$3,000. In addition to a general denial of the allegations of the petition, defendants pleaded that the words "scabs and blacklegs," as used in the article complained of, are universally accepted among miners, and especially among the miners of Laurel County, and by all the persons who knew the plaintiff, as

meaning that the plaintiff was a person who assisted in breaking strikes, and who accepted lower wages for his work than those who were known as "the United Mine Workers." The ordinary meaning of the word "blackleg" is a swindler; a dishonest gambler. It also means a strike breaker. Webster's International Dictionary. In the latter sense it is used as a term of opprobrium by workingmen. It is well settled that all written words, which hold the plaintiff up to contempt, hatred, scorn, and ridicule, and which, by thus engendering an evil opinion of him in the minds of right thinking men, tend to deprive him of friendly intercourse in society, are libelous per se. [Cases cited.] The rule that words are to be understood in mitiore censu [in the less objectionable sense] has been superseded. Words are now construed by the courts in their plain and popular sense. Under this rule, the words "detestable blackleg" are, we think, libelous per se.

LABOR ORGANIZATIONS—POWERS—FINES UPON MEMBERS—INVESTIGATION—*Monroe et al. v. Colored Screwmen's Benevolent Association No. 1 of Louisiana, Supreme Court of Louisiana (Oct. 21, 1914), 66 Southern Reporter, page 260.*—John M. Monroe and others brought petition for mandamus against the labor union named, which is Local No. 237 of the International Longshoremen's Association. In February, 1912, a strike was declared by the two locals of the association in Gulfport, Miss., and the defendant association passed a resolution assessing a fine of from \$5 to \$25 against any of its members who should go to Gulfport and work while the controversy was on. In May the twenty-two plaintiffs in this case went to Gulfport and engaged in work for the employers concerned in the strike. On the next day the defendant association was notified, and it assessed fines of from \$5 to \$25 on the several plaintiffs. Later plaintiff Monroe was before the association at meetings, and asked an investigation, and one was made by a special committee, which went to Gulfport, and reported that the work was not done by the plaintiffs with the consent of the Gulfport locals, as the plaintiffs claimed, but against their wishes. On their failure to pay the fines the plaintiffs were expelled from the association, and their working cards withdrawn, without which it was impossible to secure employment in their line in New Orleans; and the mandamus was sought to compel the association to furnish the cards.

Judge Provosty delivered the opinion of the court, affirming a judgment for the respondent association in the civil district court of the parish of Orleans. After stating the facts and the contentions of the parties, he spoke as follows:

In support of their contention of their having been condemned without a hearing, they show that under section 4 of article 30 of the by-laws and article 24 of the constitution of the defendant association they are entitled to a trial before the grievance committee of the association.

It is true that there is such a committee, and that it is "the duty of said committee to investigate all grievances and report the result of their investigation to the association, at the next regular meeting for final disposition," but we think that the plaintiffs have had the full benefit of a hearing before a committee of their own choice, and that, under all the circumstances of the case, they had had all the hearing they can possibly be entitled to.

And, besides, there can be and is no denial of the fact that the work they did in Gulfport was without the consent of the locals of that city; and hence that the said section 3 of the rules of the international association was violated, the penalty of which is expulsion. Of what possible use, then, could any further hearing be to them? Their only contention in that connection is that the strike in Gulfport was ended; and that therefore they violated no rule of the association. But the said section 3 of the rule of the international association is not confined to strikes, but reads:

"Any member who may allow himself to be employed at any work coming under the jurisdiction of another local without the consent of the local having jurisdiction of the work, shall," etc.

So that the plaintiffs violated this rule even if the strike was ended.

On the question of whether the Gulfport locals had already adjusted their differences with the ship agents and stevedores or were still "asking for recognition and regulation in handling cotton," the judgment of the said investigating committee, rendered as it was after hearing and approved by the association, is conclusive upon the courts. 6 Cyc. 827.

As to the said section 3 of the rules of the international association being in violation of the Sherman Antitrust Act, the learned counsel of plaintiffs has not pointed out in what respect it is. The contention, if well founded, would render unlawful such associations as the defendant, the lawfulness of which is well recognized. Cyc., Labor Unions; Longshore-Printing Co. v. Howell, 26 Or. 527, 38 Pac. 547.

LABOR ORGANIZATIONS—RELIEF FUNDS—DISPOSITION—LIABILITY FOR WRONGFUL USE—*Attorney General ex rel. Prendergast et al. v. Bedard et al., Supreme Judicial Court of Massachusetts (June 17, 1914), 105 Northeastern Reporter, page 993.*—Joseph Bedard and others appealed from a decree in equity issued from the supreme judicial court, Suffolk County, requiring them to pay into court certain amounts of money alleged to have been in their hands as a trust fund, and to have been wrongfully appropriated or expended. The information, after alleging the raising of a fund by subscription for the relief of the strikers, alleged on information and belief that the personal defendants, conspiring and agreeing together, had used substantial portions of the fund for purposes entirely different from those for which it was donated by the contributors and for purposes other than the proper promotion of the objects of the trust; that it had in part been improperly used for the private and personal uses of the defendants and their associates; that they or some of them had drawn sums there-

from as salaries; that substantial amounts had been contributed for the board and private expenses of one of the defendants, who was confined in jail; that large amounts had been paid for the transportation to other cities of children for uses in connection with appeals for further contributions; that sums had been paid to counsel and others engaged in defending one of the defendants and others against criminal charges; and that large sums had been turned over to the Industrial Workers of the World.

The decree of the lower court was affirmed with modifications necessary to make plain the exact liability of the several defendants. Judge Sheldon said in part, in delivering the court's opinion:

According to the averments of the bill, the fund in question was raised by subscriptions as a relief fund, to relieve the necessities of a very great number of men who had engaged in a strike, and who thus had been left without any means of maintaining themselves and their families. The fund was raised and should be applied for the purposes of a public charitable trust. [Cases cited.]

The evidence heard by the master is not reported, and we can not say that his findings were wrong. The defendants received the money in question as a trust fund. They must account for it, and can be credited only with disbursements which actually were made for proper purposes. They must be charged with everything for which they have not properly accounted. This is a sound principle, and is abundantly supported by authority. [Cases cited.] It was for the defendants to keep the trust fund distinguished from other moneys in their hands; and the consequences of any failure on their part to comply with this duty must fall upon themselves. [Cases cited.]

We can not doubt that the defendants, the custodians and managers of this fund, are under the same obligations as if they expressly had been made the trustees thereof. [Cases cited.]

LABOR ORGANIZATIONS—RIGHT TO STRIKE—PROCURING DISCHARGE—*Roddy v. United Mine Workers of America et al.*, Supreme Court of Oklahoma (Mar. 10, 1914), 139 Pacific Reporter, page 126.—J. H. Roddy brought action against the United Mine Workers of America and against the district and local organizations affiliated with the same and their individual members, for damages suffered by him by reason of loss of his employment. It was alleged that the defendants had procured his discharge by threats to strike if the plaintiff, a nonunion man, was retained. Judgment in the district court of Coal County was for the defendants, and on appeal this was affirmed. Judge Brewer in delivering the opinion discussed the question involved, cited the authorities, and set forth the views of the court as follows:

We take it as fundamental that any man, in the absence of a contract to work a definite time, has a right to quit whenever he chooses, for any reason satisfactory to him, or without any reason.

We think under the better authority that what an individual may do, a number of his collaborators may join him in doing, provided the thing to be done is lawful. We quote the words of Chief Justice Alton B. Parker, in *Nat'l Protective Assn. v. Cumming*, 170 N. Y. 320, 63 N. E. 369 [Bul. No. 42, p. 1118]:

" * * * Whatever one man may do alone, he may do in combination with others, provided they have no unlawful object in view. Mere numbers do not ordinarily affect the quality of the act. Workingmen have the right to organize for the purpose of securing higher wages, shorter hours of labor, or improving their relations with their employers. They have the right to strike, that is, to cease working in a body by prearrangement until a grievance is redressed, provided the object is not to gratify malice or inflict injury upon others, but to secure better terms of employment for themselves. A peaceable and orderly strike, not to harm others, but to improve their own condition, is not in violation of law."

In *Clemmitt v. Watson*, 14 Ind. App. 38, 42 N. E. 367, it is said: "So far as appears by these instructions none of the appellants were under any continuing contract to labor for their employer. Each one could have quit without incurring any civil liability to him. What each one could rightfully do, certainly all could do if they so desired, especially when their concerted action was taken peaceably, without any threats, violence, or attempts at intimidation."

And in *Raycroft v. Tayntor*, 68 Vt. 219, 35 Atl. 53, it is said: "One who procures the discharge of an employee not engaged for any definite time, by threatening to terminate a contract between himself and the employer, which he had a right to terminate at any time, is not subject to an action by the employee for damages, whatever may have been his motive in procuring the discharge."

Quotations were made from Cook's Trade and Labor Combinations on the question of the right to strike, expressing views similar to those set forth above, and the opinion concludes:

A petition based on the charge that the plaintiff, a nonmember of a labor union, was discharged from his employment because of the demands therefor made by the authorized agents and committees of a labor organization, who informed the common employer that if such nonunion man was not discharged the union men would strike does not state a cause of action for damages against either the labor organization or the individual members thereof, and a demurrer to such petition was properly sustained.

LABOR ORGANIZATIONS—STRIKES—CONSPIRACY—INCITEMENT TO COMMIT CRIME—LIABILITY AS PRINCIPAL—*People v. Ford*, District Court of Appeals, Third District of California (Sept. 10, 1914), 143 Pacific Reporter, page 1075.—Richard Ford and H. D. Suhr were indicted separately for the murder of one E. T. Manwell on the 3d of August, 1913, in Yuba County, Cal. Conviction was had in the superior court of Yuba County in a joint trial, the verdict being for murder in the second degree, with a sentence of life imprisonment.

Both defendants appealed, and by stipulation the appeal of defendant Suhr was to be heard upon the same transcript of record as that of Ford. The judgment of the court below was affirmed by the court of appeal as to both defendants, and a rehearing was denied by the supreme court on November 9, 1914.

The circumstances leading up to the killing of Manwell were briefly that the defendants were officers and active workers of the Industrial Workers of the World, referred to in the opinion as the I. W. W. The disturbance resulting in the crime under consideration arose out of conditions in the hop fields of Yuba County, the conditions of employment being complained of and a strike organized with the attempt to enforce certain demands as to conditions of employment. It appears from the evidence that on the day of the killing of Manwell there were at a large ranch owned by one Durst some 2,000 or 2,500 people of different nationalities, men, women, and children, gathered to pick hops, the picking having begun about the middle of the preceding week. Insanitary lodging conditions and unnecessary hardships in the performance of work aroused dissatisfaction, which found expression on Saturday, August 2. Suhr and Ford sent telegrams to different points, informing their associates in the I. W. W. of a strike on the Durst ranch, and asking for speakers and money to support the strikers. The opinion states that:

Much testimony was admitted describing in detail the conditions existing at the Durst hop fields. We do not think it necessary to set out this testimony. It showed a situation calling for some radical reform measures in order to make it a desirable place for such numbers of people to work, both in respect of their moral and physical well-being. Bad as these conditions were, however, they furnished no justification for the tragic events of that Sunday and need not be dwelt upon. Ford was the leader and spokesman of these hop pickers. He conducted their meetings, of which there were several, during Sunday before the 5 o'clock meeting at which Manwell was killed. These meetings were in the main orderly, but plainly disclosed Ford's mastery and power to lead and control the more or less excited and turbulent body of persons comprising a considerable part of the assembled masses of striking and disappointed people, looking to their leader for guidance and relief. Suhr's telegrams show that it was an I. W. W. movement. In the earlier part of the day Constable Anderson made an effort to arrest Ford, but being challenged to produce a warrant, and not then being able to do so, and after some rather rough handling by persons around Ford, he desisted, but later a complaint was sworn to before a justice of the peace at Wheatland, and a warrant was duly issued thereon and placed in Anderson's hands.

Manwell was killed at a meeting of the hop pickers at about 5 o'clock, and a deputy sheriff died of gunshot wounds received at that time. Two hop pickers were killed, and other serious injuries inflicted on parties on both sides. There was no claim that Ford

fired the shot which resulted in Manwell's death, though confessions made by Suhr were such as to give rise to the inference that he may have done so. As to the contention of the defendants, appellants in the present instance, the opinion reads:

As we understand defendant's position, it is that defendant was at most engaged in conducting a strike, which was not an unlawful act, or that, if he was committing a trespass, it was but a misdemeanor; that, whatever his acts or his words spoken which may have led to the killing, they should have been alleged, and as his acts and words concerned only an undertaking not unlawful, or, if unlawful, was but a misdemeanor, the killing as matter of law, must be held not to have been murder in either degree; that, unless the defendant's acts and words constituted a felony, he could not be held for murder because they resulted in the death of some one, and at most his offense would be manslaughter because lacking the essential elements of murder. It is hence contended: First, that evidence of a conspiracy was not admissible and can not be considered because the conspiracy was not pleaded; and, second, that evidence which fell short of showing a conspiracy to commit a felony would not support the verdict. We confess to some difficulty in discovering precisely defendant's contention, but have given it as we understand it. The indictment was for murder and was charged in the language of the statute. We entertain no doubt as to the admissibility of evidence of a conspiracy under such an indictment, where the murder was committed while the conspirators were engaged in the consummation of some other unlawful act.

Upon the question of the responsibility for the acts of the conspirators, we conceive the law to be that where one person unites with one or more other persons in an enterprise to commit an unlawful act, whether a felony or misdemeanor, with the intention to withstand all opposition by force, and is present aiding and abetting the deed, and murder is committed by some one of the party in pursuance of the original design, or the unlawful act results in death, he is guilty as the principal or immediate offender.

It was not the theory of the prosecution, as claimed by defendant, "that every labor leader is responsible for all the acts of striking workmen, and that each labor leader can be tried under an indictment baldly stating that the said labor leader has personally done a specific thing, in this case murder, whereas, in fact, it is sought to hold him responsible for the act of another." The theory of the prosecution was that Ford, as the leader in this instance, was engaged in the unlawful act of resisting arrest by a peace officer armed with a lawful warrant, and that by his words and acts he incited the persons then under his leadership to aid and assist him in such unlawful act, and that Manwell met his death through the act of one or more of these conspirators thereunto induced by Ford.

Another complaint was that the trial judge had refused to give charges as to the lawfulness of a strike and a boycott, and that men have a right to quit work for any reason or no reason singly or in a body, and peaceably to picket or request others to cease work. As to this the court said:

It is urged that, under the instructions given, the jury might have assumed that striking or picketing or boycotting was an unlawful act, and, to prevent such assumption by the jury, defendant was entitled to have the instructions given. There was no evidence that the killing occurred while the conspirators were in the act of striking, picketing, or boycotting. There was evidence that many of the hop pickers quit work Sunday morning on their part a strike; that a boycott was declared and was in operation early in the day against certain businesses being carried on in the camp—a store, a restaurant, a near-beer booth, and a shooting gallery.

Manwell was killed at a meeting of hop pickers held at about 5 o'clock of that day under circumstances which will hereinafter be more fully set forth. Suffice it at this point to say that, while it may be assumed that the hop pickers were assembled at this meeting originally to consider or talk over their grievances, it soon, under the leadership of Ford, took on altogether a different complexion. He made it known to the people that the officers of the law were approaching with an intention to arrest him, and he called upon his followers to stand by him and prevent his being taken. This they did promptly upon the coming of the officers into their midst, and there quickly followed, not only Manwell's death, but other tragic and fatal happenings which showed that the sole purpose of the actors was to prevent Ford's arrest at all hazards. The tragedy may be said to have remotely had its origin in the strike; that is, if there had been no strike, there might have been no officers there, and no occasion for their being there. But, so far as the strike and the occurrences of the earlier part of the day are concerned, they became collateral to the events happening at 5 o'clock and immaterial to the issue being tried. The legal right of the parties to strike was not an issue and furnished no justification for killing Manwell in their effort to protect their leader, Ford, from arrest.

The opinion details at length the evidence showing the circumstances of the killing of Manwell, including the appeals of Ford to the strikers to stand loyal and not let the officers take him, saying, "If they do come, I hope you tear them into dog meat," the crowd responding, "Yes, make mincemeat out of them." Having summed up this evidence, the court said:

The principles of law already to some extent pointed out, it seems to us, are clearly applicable to the case here presented, and that the jury were fully justified in finding defendant Ford guilty as a principal in the murder of Manwell, although he did not himself fire the fatal shot. The conclusion of the jury that the unwarranted attack upon the sheriff and his assistants while in the execution of a lawful duty, resulting in the death of a deputy sheriff and Manwell, was the direct result of Ford's acts and conduct was, we think, fully justified by the evidence.

The testimony as to Suhr was then reviewed, and both the evidence of witnesses and his confessions apparently voluntarily made were found to support the judgment in his case, so that after an examination of the whole case the judgment as to both defendants was affirmed.

LABOR ORGANIZATIONS—STRIKES—PICKETING—*In re Langell, Supreme Court of Michigan (Jan. 5, 1914), 144 Northwestern Reporter, page 841.*—Proceedings were brought against Harry Langell for contempt of court in violating a strike injunction, and he having been found guilty, the case came before the supreme court on a writ of certiorari. The judgment was affirmed by the majority of the court, while three signed a dissenting opinion. The majority opinion was written by Judge McAlvay, and from it the following is quoted:

The petition in these proceedings gives a sufficient résumé of the bill to show it charged that complainant in the manufacture of engines at its foundry and plant in Lansing, Mich., employed a large number of men; that on May 18, 1912, many of these employees, including petitioner, being members of this molders' union, went on a strike and, acting in concert, had been guilty of illegal acts with intent to injure the business of complainant and compel it to accede to their demands as to a scale of wages and hours of work and by acts of violence toward its employees had intimidated them and caused many of them, who desired to do so, to refrain from working for complainant and picketed its premises for the purpose of intimidating its employees and injuring its business, thereby causing its employees to refrain from work; that such picketing and other unlawful conduct and violence had continued for a long time before the filing of its bill of complaint, and such picketing was then being maintained continuously about its premises, and intimidated its employees and others from coming to work or transacting business with it.

The said injunction restrained all of the defendants, including petitioner, as follows: "(a) From in any manner interfering with the employees of the complainant by way of threats, personal violence, intimidation, or any other unlawful means calculated or intended to prevent such persons from entering or continuing in the employment of the complainant or calculated or intended to induce any such person or persons to leave the employment of the complainant. (b) From congregating or loitering about or in the neighborhood of the premises of the complainant with intent to interfere with employees of complainant or from picketing said premises or the approaches thereto, or in any manner interfering with the employees of complainant or from in any manner interfering with or obstructing the business or trade of complainant. (c) From in any manner interfering with the free access of employees of complainant to complainant's premises in the city of Lansing, their place of work, and from in any manner interfering with the free return of said employees to their place of business or to their homes or elsewhere."

Copies of the restraining order were, on July 5, duly served upon the defendants, including the petitioner in these proceedings. On July 6 following, the petitioner, who resided about 2 miles from complainant's premises, at 5.30 o'clock in the morning, stationed himself in the highway directly opposite to one of the entrances to complainant's premises and remained there while its employees were passing and crossing the street to enter complainant's premises to go to work. Three or four other members of the molders' union also were present in the vicinity standing 50 feet or more from the petitioner. They said nothing to the workmen as they passed and made

no physical attempt to interfere with them. They were standing at or about the same places occupied by pickets on the preceding Saturday, and at other times, when petitioner and other strikers were present as pickets, and some of them hooted and called "scab" at the workmen entering complainant's plant.

The contentions of petitioner which require consideration are: That the court had no jurisdiction to issue the restraining order against picketing; and that there was no evidence in the case tending to show a violation of the restraining order by petitioner in any respect. This court has held that a circuit court, in chancery, has jurisdiction to issue an injunction restraining interference by labor organizations, and the members of the same, during a strike with the rights of an employer by picketing his premises. *Beck v. Teamsters' Protective Union*, 118 Mich. 497, 77 N. W. 13; *Ideal Mfg. Co. v. Wayne Circuit Judge*, 139 Mich. 92, 102 N. W. 372. The first contention, therefore, requires no further consideration.

From our examination of all of the evidence in the record, we are satisfied that there was evidence in the case tending to support the finding of the circuit judge. The testimony of petitioner shows that he was a person having some authority in the molders' union; that he understood that the restraining order prohibited picketing and that in his opinion the court had no authority to issue such an order; and that if anyone went there, without saying anything to the employees or making any disturbance, it would not be punishable. It is clear, from his testimony, that he went there because he thought that he could do it with more discretion than the ordinary members; that he went there willfully and in defiance of the order, under the impression that a silent picketing was not unlawful. It appears from the evidence that he had been active and present on former occasions when there was open interference with the employees. It is urged that because petitioner stationed himself at this place and said nothing and did no overt act of interference that his acts, if found to be picketing, were lawful. Such a contention is supported by many authorities. The later and more reasonable rule, however, holds that all picketing is illegal.

"The doctrine that there may be a moral intimidation which is illegal, announced by the Supreme Court of Massachusetts, was among the first real steps taken in this country toward overturning the rule permitting peaceable picketing * * * and was a forerunner of the later rule that there can be no such thing as peaceable picketing and consequently that all picketing is illegal." 24 Cyc. 836, citing *Vegetahn v. Guntner*, 167 Mass. 92, 44 N. E. 1077; *Franklin Union v. People*, 220 Ill. 355, 77 N. E. 176; *Atchison, etc., R. Co. v. Gee*, 139 Fed. 582; *Beck v. Teamsters' Protective Union*, supra.

The proceedings are affirmed.

The dissenting decision, written by Judge Kuhn, is for the most part as follows:

After a careful reading of the record in this case, I am not convinced that the petitioner should have been found guilty of contempt.

In the case of *Beck v. Teamsters' Protective Union*, 118 Mich. 497, 520, 77 N. W. 13, 22, in defining a picket, this court said: "As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades-union sent to

watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress." Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it and the common application that has been made of it.

It has also been defined as "relays of guards in front of a factory or the place of business of the employer for the purpose of watching who should enter or leave the same." *Cumberland Glass Mfg. Co. v. Glass Blowers' Assn.*, 59 N. J. Eq. 49, 46 Atl. 208. Also "as the establishment and maintenance of an organized espionage upon the works and upon those going to and from them." *Otis Steel Co. v. Local Union*, 110 Fed. 698. Under these definitions, it is necessary, in order to have picketing, to have a deliberate, organized action on the part of at least more than one person. No organized action is shown by this record. This petitioner went on the street of his own motion. He was not a part of a body of men sent to watch and annoy, within the definition in the Beck case. He was only in the immediate vicinity of the plant for a few minutes. He interfered with no one; made no threats. I find nothing in the record to warrant the finding that he annoyed the workmen; in fact, the workmen who were sworn testified that he did not talk to them nor interfere with them in any way.

The order of the circuit judge finding the prisoner guilty of criminal contempt should be vacated and set aside, and the petitioner discharged.

LABOR ORGANIZATIONS—STRIKES—PICKETING—INJURY TO BUSINESS—DAMAGES—*Berry Foundry Co. v. International Molders' Union*, *Kansas City Court of Appeals* (Jan. 19, 1914), 164 *Southwestern Reporter*, page 245.—The original proceeding in this case was the filing by the company named of a bill for an injunction against the union and other defendants and for damages for unlawful acts charged in the petition. The circuit court of Buchanan County issued a temporary injunction which was afterwards made perpetual, and gave the plaintiff damages in the sum of \$2,000. An appeal was taken to the supreme court, but on account of the insufficiency of the sum involved it was transferred to the court of appeals.

The company conducted a foundry in the city of St. Joseph, Mo., its employees formerly belonging to an organization known as union labor. Following a decision to pay their workmen by the piece instead of by the day, the managing officer of the union conferred with the chief officer of the company, and on their failing to agree a strike was threatened, which began on the following Monday, the men quitting work and a portion of them engaging in picket duty. In response to advertisements, other workmen came to take the vacated places, some being turned back by the strikers, while others took employment in spite of the opposition. The testimony was in absolute conflict as to the nature of the picketing engaged in and the con-

duct of the strikers and of the employees of the plaintiff company. On this point Judge Ellison, who delivered the opinion of the court, said:

Whichever of the parties is right in this radical difference of fact is entitled to prevail; for it has been determined by the supreme court of the State that laboring men have a legal right to strike and quit work in a body, and that they have a right to post men near by to quietly and peaceably persuade other workmen not to take their places. *City of St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30 [Bul. No. 78, p. 601]; *Shoe Co. v. Saxey*, 131 Mo. 212, 32 S. W. 1106 [Bul. No. 4, p. 440]. But they have no right to break the law by using force, intimidation, or threats. Nor have they any right to conspire to break up their late employer's business. *Door Co. v. Fuelle*, 215 Mo. 421, 114 S. W. 997 [Bul. No. 81, p. 434].

The evidence was then discussed, the contradictory charges and the obvious falsity of some of the testimony introduced by the defendant union being set forth. The conclusions derivable from this testimony, and the decision of the court as to damages, appear in the concluding portion of Judge Ellison's opinion, which is as follows:

Amid all the contradiction of witnesses and the exaggeration of statement, the indisputable fact stands out that defendant's manager, Wilkerson, in resentment over plaintiff's changing the plan of work and payment of wages, determined to ruin plaintiff's business and ordered a strike. The testimony showed that such, in effect, was his threat, and he sat by in court and did not deny it. And in carrying out the strike, instead of mild, peaceful, and merely persuasive means, defendants terrorized those who were willing to work, so that they were compelled to stay inside the foundry premises and eat and sleep there, and, if they went abroad, were frequently compelled to have the protection of officers. In our opinion the trial court came to the only conclusion justified by a proper consideration of the evidence.

We think the trial court properly allowed damages as prayed in defendant's bill. We think they are not justly liable to be called speculative, or remote. With what was shown to have been done by defendants, serious and substantial damages must necessarily have followed. And they were in such conservative amount (being put at \$2,000 by the trial court) that we think there would be no justification for us to reserve the judgment on account of some supposed error in ascertaining them, when the whole record plainly shows a greater sum than the judgment. It appears that on account of the assaults, threats, and intimidations of defendants, plaintiff was compelled to provide for new employees inside the buildings; beds were put up, and a restaurant established.

We do not think there was any error in allowing loss of profits as a part of the damage. If one loses profits by the wrongful act of another, there is no more reason why he should not be reimbursed for such loss than if it had been of some other nature. The only difficulty concerning such character of damage (it being in some degree intangible) is that it is frequently impossible to show it with that degree of certainty the law requires, and it becomes so much a mat-

ter of guess and speculation that it is disallowed. But in this case, it seems to us to have been demonstrated by the records of the company's business, expenses, income, numbers employed and mode of operation, immediately preceding defendant's unlawful interference and immediately afterwards.

The conclusion of the trial court was manifestly right, and the judgment will be affirmed. All concur.

RELIEF ASSOCIATIONS—RAILROADS—APPLICATION FOR MEMBERSHIP—FRAUDULENT REPRESENTATIONS—*Daughtridge v. Atlantic Coast Line R. Co., Supreme Court of North Carolina (Mar. 11, 1914), 80 Southeastern Reporter, page 1080.*—Charles Daughtridge sued the railroad company to recover for sick benefits claimed to be due him from its relief department, of which he was a member. The company contended that the claim was invalid on the ground that Daughtridge had certified in his application for membership that he was correct and temperate in his habits, and so far as he was aware, in good health and had no injury or disease, constitutional or otherwise, when in fact he was afflicted with syphilis. The employee recovered a judgment in his favor in the superior court of Edgecombe County, North Carolina, and this judgment was affirmed by the State supreme court. The following language from the opinion of Judge Hoke shows the position taken by the court:

In reference to regular contracts of insurance, section 4808 of Revisal makes provision as follows: "All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed and held representations and not warranties; nor shall any representation, unless material or fraudulent, prevent a recovery on the policy."

In Alexander's Case (150 N. C. 536), Associate Justice Brown, delivering the opinion, said: "The company was imposed upon (whether fraudulently or not is immaterial) by such representations, and induced to enter into the contract. In such case it has been said by the highest court that, 'Assuming that both parties acted in good faith, justice would require that the contract be canceled and the premiums returned.'" (Citing *Insurance Co. v. Fletcher*, 117 U. S. 519, 6 Sup. Ct. 837.)

While, therefore, it is the fully established position as to ordinary contracts of insurance, coming within the statutory provision, there are so many conditions distinguishing this from such a contract that we think his honor was clearly correct in his view that the contract of membership in the relief department is unaffected by the statute, and, * * * that, in order to sever the plaintiff's membership and deprive him of its benefits, it was necessary to show that the vitiating statements were knowingly false, or made with a fraudulent purpose to mislead the defendant. From a perusal of plaintiff's evidence, uncontradicted in these respects, so far as the record shows, it appears that plaintiff was required by the company to join the relief department; that he was examined by the physician of the

company, who himself seems to have written out the answers in the application; that every mark or indication of syphilis, now relied upon by defendant to defeat recovery, was existent and observable at the time of examination made, and, further, that for the six months that plaintiff was employed, and until he was paralyzed, after 48 hours of continuous and very heavy work "taking only time to eat," there had been deducted from his pay roll 75 cents, the monthly charge for membership, and that there is no offer to return any part of this amount. While these considerations might not, of themselves, avail to change the terms of a contract otherwise plain of meaning, they, or some of them, are relevant where interpretation is permitted, and were no doubt given consideration by the company in framing their printed form of application for membership. For it will be observed that, in this form signed by the plaintiff, the representations are not positive in terms, as in usual and voluntary applications, for insurance, but, as heretofore noted from the evidence, they are prefaced and affected by the statement: "I certify that I am correct and temperate in my habits, that, so far as I am aware, I am now in good health and have no injury or disease, constitutional or otherwise, except as shown in the accompanying statement made by me to the medical examiner which statement shall constitute a part of this application." From the language of the stipulation with the relevant facts and circumstances attending its execution, we concur, as stated, with the court below, in holding good faith on the part of the applicant is all that the company have required, or should reasonably require, and that the cause in this respect has been properly submitted to the jury.

STRIKES—MARTIAL LAW—INSURRECTION—POWER TO HOLD AND TO TRY OFFENDERS—*Ex parte McDonald et al., Supreme Court of Montana (Oct. 8, 1914), 143 Pacific Reporter, page 947.*—This was a habeas corpus proceeding in which Mitchell McDonald and others were petitioners, and a separate proceeding by Dan Gillis. Following disturbances of the peace in connection with local industrial disputes, Governor Stewart, on September 1, 1914, issued a proclamation declaring the county of Silver Bow to be in a state of insurrection, proclaiming martial law in it, and ordering military forces there under the command of Major Donohue. The forces went into the county and took military possession of it, which continued at the time of the decision of this case. On September 12, McDonald and five others filed in the supreme court petitions for writs of habeas corpus, alleging that they were being unlawfully detained by the governor and Major Donohue and other military officers, who were named as respondents, in that they had been arrested without warrant and were being held without bail, to be tried, without a jury, before an alleged court or tribunal set up by the military authorities, upon charges to them unknown, and this notwithstanding they had infringed no law. The respondents made return, setting forth their official character, the

proclamation of the governor and one made by Major Donohue upon his arrival in the county; and that the county was still in a state of insurrection, and the detention of the men, alleged to be leaders of the insurrection, was necessary for the purpose of the military occupation. This answer also stated that it was the purpose to surrender them to the civil authorities as soon as it could safely be done with reference to the suppression of the present state of insurrection. Upon the return and the evidence taken at the hearing, the court made an order denying the release of the petitioners, with leave to re-petition after 30 days, if at that time they had not been delivered to the civil authorities and the courts were then open and able to execute their process.

On September 24, 1914, Dan Gillis filed a petition for a writ of habeas corpus, alleging unlawful detention by the same respondents, and also that he had been restrained by virtue of a commitment issued on September 21 by Jesse B. Roote as major and judge of a certain summary court set up by the military authorities upon a charge of assaulting and resisting an officer, in which proceeding said Roote had assumed to adjudge the petitioner guilty and to sentence him to be imprisoned in the county jail for the term of 11 months and to pay a fine of \$500. The petition alleged that the courts of the county were open for the trial of causes.

The return to this petition made by the military officers as respondents admitted the detention and defended on the ground of the authority of the summary court, and of the lack of jurisdiction of the supreme court to discharge the petitioner.

The supreme court held first that the governor had the constitutional right to detail the militia to a portion of the State where a state of insurrection existed, and that his determination that such a state existed and continued to exist was conclusive upon the court.

Discussing further the cases of the five petitioners who had been simply arrested and held, Judge Sanner, who delivered the opinion, said:

It was distinctly asserted in the returns, and established to our satisfaction by the evidence taken upon the hearing, that McDonald and his copetitioners had not been arrested and were not being held for trial before any court-martial or other military tribunal, but that they had been arrested as leaders and inciters of the insurrection, and were being held as necessary measures for its suppression, to be turned over to the civil authorities for trial as soon as that could safely be done. After a consideration of all that was said in argument and of practically all the accessible literature on the subject, we are convinced that the theory which accords the least power to the governor and to the militia in cases of insurrection is that he acts as a civil officer of the State, and that the military forces under him operate as a sort of major police for the restoration of public order; and we confidently assert that under this theory the arrest

and detention, under the circumstances stated, can be justified and must be upheld. The release of McDonald and his copetitioners was therefore denied; but since the justification is necessity, and since it can not obtain beyond the period of such necessity, we granted leave to reapply, having in mind that the course of events might or might not demonstrate the detention of these petitioners beyond the time indicated to be unnecessary.

Taking up the case of Gillis, Judge Sanner discussed the question of the jurisdiction of the court, taking the view that the martial law which could lawfully be proclaimed by the governor was not sufficiently inclusive to suspend the writ of habeas corpus or the conviction of a civilian for crime, without trial by jury.

With regard to another contention of the military authorities, Judge Sanner said in part:

It is insisted, however, that under all the decisions the executive can establish martial law in time of war when the ordinary tribunals are not open, that an insurrection is war, and that the proof at bar shows the civil tribunals of Silver Bow County to have been closed. When in domestic territory the laws of the land have become suspended, not by executive proclamation, but by the existence of war, the executive may supply the deficiency by such form of martial law as the situation requires, but we deny that insurrection and war are convertible terms.

Judge Sanner said that the court was not influenced by the argument that in case of prolonged insurrection, the summary trial of offenders would be preferable to detention; also that the statutory provisions for change of venue take care of the possibility that a trial by jury, fair to the State, could not be had in the courts of Silver Bow County on account of the state of public feeling, and continued:

Martial law, however, is of all gradations, and although the governor can not, by proclamation or otherwise, establish martial law of the character above discussed, he is not barred from declaring it in any form. We must therefore assume that, in using that phrase in his proclamation, he meant only such degree or form of martial law as he was constitutionally authorized to impose. As we have seen above, he was authorized to detail the militia to suppress the insurrection and to direct their movements, without regard to the civil authorities, and they could in the performance of their work take such measures as might be necessary, including the arrest and detention of the insurrectionists and other violators of the law, for delivery to the civil authorities; but neither he nor the military under him can lawfully punish for insurrection or for other violations of the law. The courts can not be ousted by the agencies detailed to aid them; nor can their functions be transferred to tribunals unknown to the constitution.

The conclusion as to Gillis's case was as follows:

The trial and commitment of petitioner Gillis were void, and his detention thereunder can not be upheld. But he is not entitled to

his release. The record discloses an abortive attempt to try and punish him for an alleged violation of the laws of the State. He must, therefore, be remanded to the custody of respondents, to be dealt with according to law.

STRIKES—USE OF HOUSE AS PART OF EMPLOYEE'S COMPENSATION—DAMAGES FOR EJECTION—*Lane v. Au Sable Electric Co., Supreme Court of Michigan (June 1, 1914), 147 Northwestern Reporter, page 546.*—William Lane was chief operator at the substation of the defendant company at Muskegon Heights. As a part of his compensation he had the use of a dwelling house. After a strike by other employees of the company he also left his employment. The company gave him notice to vacate the house, and then evicted him. He testified that the furniture was damaged to the extent of \$14.50, which the company conceded, and judgment was entered for this amount in the circuit court of Muskegon County on a directed verdict. The plaintiff carried the case up by writ of error, claiming that it should have been given to the jury on the question of whether excessive force was used, and also upon the question of damages because of mortification, humiliation, and injured feeling, caused by having his household effects put into the street in the presence of onlookers. The court affirmed the judgment of the court below, Judge Moore, who delivered the opinion, saying:

The record is barren of proof of forcible entry or of the exercise of excessive force. It also shows that most of the onlookers were strikers or sympathizers with the strikers and the plaintiff.

The relation of landlord and tenant between the parties did not exist. It was the relation of employer and employed; the plaintiff being in possession of property belonging to the employer by virtue of his employment. When the plaintiff voluntarily severed the relationship which entitled him to the use of the property, that moment he ended his right to its use. Suppose a maid servant was employed at a monthly wage of \$20 and the use of a furnished room in the house of her employer, and should then go on a strike and refuse to do any work, could she still insist upon the right to use the furnished room? A statement of the proposition shows its unreasonableness, and yet it is like the instant case in principle.

WAGES—COLLECTION—IDENTIFICATION CARD—*Roumelitis v. Missouri Pacific Railway Co., St. Louis Court of Appeals (April 7, 1914), 165 Southwestern Reporter, page 818.*—John Roumelitis was a Greek employed as a laborer by the railroad company named. On quitting his employment he left without securing from the section foreman the usual identification card, intended to show that the holder was entitled to the sum represented by a certain item on the pay roll. Later a friend wrote for the employee a letter requesting the foreman to send

the card to a certain address. This was done, but some other Greek secured the card and collected the money, the paymaster supposing him to be Roumelitis. The court, in reversing a judgment for the plaintiff and determining that the company was not liable to him, spoke by Judge Reynolds, as follows:

This identification card is in no sense commercial or negotiable paper. It is not even an order for the payment of money. Its use is solely for the purpose of identifying the bearer of it, as one entitled to receive pay as his name appeared on the pay rolls of the company. It was in such form as to warn the person in whose favor it was issued that the holder of it was the man who was entitled to be paid as his named amount appeared on the pay roll. When the plaintiff here, presumed to know this, directed that it be sent to a given address by mail, he took the risk of its falling into wrong hands, for he must be held to have known that it would serve the purpose of identifying whoever had possession of it as the man entitled to receive the money. Hence it was at his risk and his risk alone and on his express direction that the appellant transmitted this identification card by mail, addressed to respondent at a designated number in the city of St. Louis. That it arrived there is not questioned. That some one other than the plaintiff obtained possession of it and used it for identification and so obtained the pay check is clear. But surely appellant is not at fault for that and can not be charged with negligence. This on the familiar maxim that "where one of two innocent parties must suffer, he through whose agency the loss occurred must sustain it."

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